

# INDEX

	<u>Page</u>
Proceedings in U.S.C.C.A., Fifth Circuit	1
Caption	1
Order granting stay	1
Opinion of the Court, Hutcheson, J.	4
Dissenting opinion, Waller, J.	9
Judgment	14
Mandate of the Supreme Court	15
Motion for an order for distribution of funds	16
Motion of Memphis Light, Gas & Water Division for leave to intervene	21
Petition of intervention of Memphis Light, Gas & Water Division	25
Exhibit "A"—Schedule showing allocation of money now being held by the Court, or which was impounded by the Court	30
Exhibit "B"—Order of Federal Power Commission, Aug. 31, 1943	31
Exhibit "C"—Opinion of Federal Power Commission, Sept. 21, 1943	32
Exhibit "D"—Affidavit of J. H. Johnston, Jr.	40
Petition of Memphis Natural Gas Co. for leave to intervene	42
Motion of Southern Natural Gas Co. for leave to intervene	49
Petition for intervention of Southern Natural Gas Co.	49
Response of Federal Power Commission to motion for distribution of funds	55
Exhibit "A"—Order of Federal Power Commission, June 26, 1944	59
Verified statement of United Gas Pipe Line Co.	65
Order allowing filing of petitions of intervention	67
Petition of intervention of Illinois Commerce Commission	68

## Index (continued)

	Page
Petition of intervention of Mississippi River Fuel Corporation	71
Exhibit "A"—Order of Federal Power Commission, Nov. 9, 1945	76
Petition of intervention of City of Jackson	81
Exhibit "A"—Disclaimer of West Tennessee Gas Co.	86
Answer of Mississippi River Fuel Corporation to intervention of Illinois Commerce Commission	87
Intervention of Public Service Commission of Missouri	92
Answer of Mississippi River Fuel Corporation to intervention of Public Service Commission of Missouri	95
Argument and submission	100
Amended petition of intervention of United Gas Pipe Line Co.	100
Opinion on motion for distribution of funds	103
Motion of Federal Power Commission for stay	105
Order directing distribution of funds	109
Order staying order of distribution to May 22, 1948	112
Motion of Federal Power Commission for further stay	113
Order granting further stay to June 22, 1948	116
Clerk's certificate—[omitted in printing]	
Order allowing certiorari	118-121

"A" IN UNITED STATES CIRCUIT COURT OF APPEALS,  
FIFTH JUDICIAL CIRCUIT.

PLEAS AND PROCEEDINGS had, and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1947, at New Orleans, Louisiana, before the Honorable Joseph C. Hutcheson, Jr., the Honorable Edwin R. Holmes, and the Honorable Leon McCord, Circuit Judges:

No. 10501

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, *Petitioner*,

versus

FEDERAL POWER COMMISSION, LOUISIANA-PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, CITY OF BATON ROUGE, LOUISIANA, *Respondents*.

BE IT REMEMBERED, That heretofore, to-wit, on the 22nd day of December, A. D. 1947, a motion was filed by Interstate Natural Gas Company, Incorporated, appellant, for an Order for Distribution of Funds in the above entitled cause, which motion and pleadings in connection therewith and proceedings are as follows, to-wit:

1 In the United States Circuit Court of Appeals

*Order Granting Stay—Filed June 14, 1943.*

This matter comes before the Court upon the petition of Petitioner, Interstate Natural Gas Company, Incorporated, to review an Order of the Federal Power Commission and the prayer therein for a stay of the Order of said Commission entered April 27, 1943, as modified by orders entered May 11, 1943 and June 9, 1943 in causes G-132 and G-149 on the docket of said Commission pending review of said Order by this Court, a copy of which Order is attached to said petition as Exhibit "A", and modifications thereof are attached to said petition as Exhibits "B" and "C".

It appearing that each of the Respondents herein have been notified of this hearing and counsel for each has been furnished

with a copy of the petition filed herein and all parties having been heard, the Court hereby orders that said Order of the Federal Power Commission, as modified, be and the same hereby is stayed and suspended until the further Order of this Court, upon the conditions following:

2) 1) The monthly difference between payments to Petitioner under existing rates or arrangements and those required under the Order of the Commission shall be promptly paid into the registry of this court under the provisions of Sec. 995 of the Revised Statutes of the United States (28 U. S. C. A. 851). For gas billed in any particular month the deposit shall be made not later than the 30th day of the succeeding month, the first deposit to be made not later than July 30th, 1943 for the month of June 1943.

The amounts so deposited shall remain on deposit subject, however, to the further Order or Orders of this Court to be returned to such ultimate consumers of gas, or other persons to whom the Court shall find the same should be returned, as contemplated by the provisions of the Natural Gas Act. Upon receipt of each deposit the Clerk of this Court shall notify the Federal Power Commission stating the amount of such deposit and the total amount then on deposit in said fund.

2) The entire expenses of impounding these funds shall be borne by Petitioner.

3) No interest shall be charged Petitioner upon such impounded funds unless allowed upon application hereafter made by Respondents or any of them. Such future applications may be made only

- a) if and when Petitioner fails to prosecute this error proceeding with due diligence, or
- b) if and when this Court shall enter its decree and order sustaining the above Order of the Commission and shall deny any petition for rehearing which may be filed thereto.

Any interest allowed hereafter shall be at such rate as will be fixed by further Order of the Court.

4) Full power and jurisdiction is reserved to cancel or modify this Order and to enter any other orders (with or without application of the parties) to protect or to promote the rights and interests of the parties to this litigation and of the ultimate consumers or other parties financially interested in the impounded funds.

IT IS FURTHER ORDERED that the Clerk of this Court is directed to transmit a copy of this order to each of the parties to this proceeding or to their counsel.

O. K. as to form

(Signed) EOW. H. LANGE

*Attorney for Respondent,  
Federal Power Commission*

(Signed) NAT B. KNIGHT

*La. Pub. Serv. Com.*

(Signed) EDWARD RIGHOR

*FRANCIS P. BURNS*

*WARREN O. COLEMAN*

*Attorneys for The City of  
New Orleans*

(Signed) ALDEN T. SHOTWELL

*HENRY P. DART, JR.*

*H. GRADY PRICE*

*Attorneys for Petitioner*

Dated: June 15, 1943.

Approved for the Court

(Signed) E. R. HOLMES

*Presiding Judge.*

4 In the United States Circuit Court of Appeals for the  
Fifth Circuit

No. 10701

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, *Petitioner*,  
versus

FEDERAL POWER COMMISSION, LOUISIANA PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, CITY OF BATON ROUGE, LOUISIANA, *Respondents*.

Petition for Review of an Order of the Federal Power Commission,  
Washington, D. C.

(August 3, 1946.)

Before SIBLEY, HUTCHESON and WALLER, Circuit Judges.

*Opinion of the Court—Filed August 3, 1946.*

HUTCHESON, Circuit Judge: The proceeding under review here was brought under Section 5(a)<sup>1</sup> of the Natural Gas Act<sup>2</sup> as a general investigation of the reasonableness of all the rates of petitioner, subject to the jurisdiction of the commission.

Petitioner, as to all of its rates sought to be investigated, denied that any of them were unreasonable, and as to sales of natural gas, made by it in the Monroe Gas Field to certain pipe line companies,<sup>3</sup> it insisted that the rates and charges were not within the jurisdiction of the commission, that, indeed, as part of the production and gathering of the gas, they were by the statute expressly withdrawn from its jurisdiction.

The Commission found that all of the sales to these companies were "sales of natural gas in interstate commerce for resale for

<sup>1</sup> "See, 5(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State Commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order."

<sup>2</sup> 52 Stat. 821, 15 USC, Sec. 717.

<sup>3</sup> Mississippi River Fuel Corp.; Southern Natural Gas Co.; United Gas Pipe Line Co. for account Memphis Natural Gas Co.

ultimate public consumption" within the meaning of Section 1(b),<sup>4</sup> the jurisdictional section of the act, and that the charges made were unreasonable. Its order required reductions in these rates from 7.39¢ to 4.66¢ per M.e.f.

Petitioner is here complaining: (1) that the sales were not within, but were expressly excluded from, the jurisdiction of the commission; and (2) that the order as to them is confiscatory.

In support of its first position, it relies not only on the language of the act, but on what it calls "authorized statements of commission representatives", and "legislative history". In support of its second position it points to the fact that the charges the order fixed as reasonable are considerably less than the average price, 5.5¢, which petitioner pays for gas purchased by it in the field, and that 1.1¢ must be added to this as gathering costs. Thus for gas which cost it 6.6 cents, the order allows it to charge only 4.66 cents.

In answer to petitioner's first position, the Commission points to the precise language of the section, that the provisions of the act "shall apply to the sale in interstate commerce . . . for resale for ultimate public consumption . . ."; to the undisputed fact admitted by petitioner that the sales the order deals with are in interstate commerce; to the legislative history of the act in question as distinguished from the history of prior acts introduced but not enacted into law, on which petitioner relies; and to Peoples Natural Gas vs. The Commissioner, 123 F(2) 153; and other cases which it claims support its view.

As to petitioner's second point, that the order was confiscatory, the Commission invokes the settled principle that the rate order must be viewed not piecemeal but in its entirety, that, in short, if as a whole the order affords just compensation, the fact that some particular rate in the schedule of rates, viewed by itself alone, may appear to be low, is immaterial. Basing on that principle, it points to the admitted fact that the rate schedules as a whole established by the order are producing a 6.5% return on the rate base fixed. As to the precise rates, the Commission insists that since petitioner operates an integrated pipeline system in which both produced and purchased gas are commingled and disposes of a great part of its gas to others than these pipelines in question, there is no way of knowing just what is the source of the

<sup>4</sup> See, 1(b) of the Natural Gas Act provides:

"The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use; and to natural gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

gas delivered to petitioner's pipeline customers. By figures it demonstrates that the cost of the gas produced is less than the 4.66¢ allowed, and it insists that it is not, and cannot be, made to appear that that charge, even by itself is confiscatory.

We agree with the Commission that the rates are within its jurisdiction and that petitioner has failed to show that they are confiscatory.

Disposing first of the question of compensation, we need not inquire whether, if it stood alone, the rate allowed would be confiscatory. It is sufficient to say that the Commission is correct in its position that the rate order must be viewed in its entirety, and that "it is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end". *Federal Power Comm. v. Hope Natural Gas*, 320 U. S. 591; *Panhandle v. Federal Power*, 324 U. S. 635; *Cities Service Co. v. Federal Power Comm.*, 10th Circuit, April 30, 1946.

On the jurisdictional point, we think the language employed in the bill as it finally passed, "The provisions of this act shall apply to the sale in interstate commerce of natural gas for resale for ultimate public consumption, and to natural gas companies engaged in such transportation or sale" leaves in no doubt that the sales in question are within its purview. That they are sales in interstate commerce, we think is settled by the authorities.<sup>5</sup> That the gas was sold for resale for ultimate public consumption, we think may not be doubted. This being so, the exception of the statute that it shall not apply to "any other sale of natural gas" is unavailing to petitioner, for if the sale is the kind named in the first quoted clause, it certainly cannot be "any other sale".

We think petitioner's difficulties in construction and interpretation arise out of the fact that, treating unlike things as alike, it tries to read the exception with respect to production or gathering as an exception with respect to sales. There is no warrant in the act for so doing. It is very simply and plainly written. After stating what it shall apply to, it then states what it shall not apply to. Under familiar rules of construction, a negation in or exception to a statute will be construed so as to avoid nullifying or restricting its apparent principal purpose and the positive provisions made to carry them out. No conflict with them will, therefore, be found unless the conflict is clear and inescapable and then only in the precise point of the conflict. Cf. *Hartford v. Federal Power*, 131 F(2) 933. Here the statute was drawn to regulate, it picked out for inclusion "sales in interstate commerce of natural gas for

<sup>5</sup> *Missouri v. Kansas Gas Co.*, 265 U. S. 298; *Public Service Comm. v. Attleboro Steam & Elec. Co.*, 273 U. S. 83.

resale for ultimate public consumption". It excluded from the scope of the act sales other than of this kind. It included transportation and interstate commerce. It excluded local distribution of natural gas.

Unnecessarily perhaps but in the interest of making clear that the act gave jurisdiction only over sales and transportation of the kind described in it, it used language removing from any doubt that the Commission was not to have jurisdiction over properties used for production and local distribution or the activities of production and gathering. It did this by expressly providing that the act should not apply "to the facilities used for such [i.e. local] distribution or to the production or gathering of natural gas."

In *Peoples Natural Gas Co. v. Federal Power Comm.*, 127 F(2) 153, the court found that a sale in Pennsylvania to an interstate pipeline company which immediately transported it to New York was a sale of natural gas in interstate commerce for resale, and, so finding, held that the provision that the act did not apply to production or gathering did not limit the commission's jurisdiction over such sales.<sup>6</sup>

In the Canadian River Gas case, 324 U. S., at pp. 602-3, the Supreme Court rejected the argument which petitioner advances here that unless the meaning it contends for is given to the provision with respect to gathering and distribution, that provision will be meaningless. It said:

"That does not mean that the part of Sec. 1(b) which provides that the Act shall not apply 'to the production or gathering of natural gas' is given no meaning. Certainly that provision precludes the Commission from any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has no control over the 10 drilling and spacing of wells and the like. It may put other limitations on the Commission. We only decide that it does not preclude the Commission from reflecting the production and gathering facilities of a natural gas company in the rate base and determining the expenses incident thereto for the purposes of determining the reasonableness of rates subject to its jurisdiction."

A careful reading of petitioner's brief, especially of that portion of it devoted to the legislative history, shows that its difficulties flow from the fact that it does not distinguish between the Lea Bill, House Bill No. 11,662, proposed in 1936, but never passed,

<sup>6</sup> Cf. *Missouri v. Kansas Gas Co.*; *Public Service Comm. v. Attleboro Steam & Electric Co.*, *supra*.

and the bill which became the law now under review. Legislative history cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. \* \* \* If the language be clear, it is conclusive". *People's Natural Gas Co. v. Federal Power Comm., supra*, quoting from *United States v. Shreveport Grain Co.*, 287 U. S. at page 83. Certainly the legislative history of a bill that was not adopted cannot be resorted to to construe a bill that was.

It is quite plain that from the time the Lea Bill was introduced until the Natural Gas Act was passed, the ideas of the proponents of the legislation underwent considerable change. The purpose of the Natural Gas Act, as shown in the Senate and House Committee reports, which are identical, was to provide for the regulation of natural gas companies transporting and selling natural gas in interstate commerce. Its proponents were not interested in the production of gas or the individual sales of gas at the well. Nor were they interested in gathering of the gas in the field. What they were interested in, as the report in terms states, what they were trying to reach, was wholesale sales of gas. Says the report:

"There is no intention in enacting the present legislation to disturb the states in their exercise of such jurisdiction. However, in the case of sales for resale, or so-called wholesale sales in interstate commerce, (for example sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character, and, even in the absence of congressional action, not subject to state regulation. (See *Missouri v. Kansas Gas Co.*, (1924), 265 U. S. 298, and *Public Service Commission v. Attleboro Steam & Electric Co.*, (1927), 273 U. S. 83). The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act."

It would be difficult to conceive language better adapted to achieve this purpose than the language of the act in question here. It would be difficult to find a case more clearly illustrating the mischief which the act was supposed to remedy, more fittingly applying the remedy. The statute expressly provides that "it shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale \* \* \*". It is conceded that Interstate is a natural gas company engaged in interstate transportation and

sale, and it is further established that it, in *Interstate Natural Gas Co. v. Public Service Comm.*, 33 Fed. Supp. 50, 34 Fed. 12 Supp. 980, successfully contended in the Federal Court that

sales to the pipelines in question were ~~acts~~ in interstate commerce and beyond the reach of the State Commission. This is not to say that its success in so contending would estop it from claiming the contrary here or that the decision it obtained there is controlling here. It is to say though that the position it took and the decision it obtained give force and color to the avowed purpose of the Natural Gas Act as House and Senate Committees stated it, and that it seems clear to us that it would be difficult to find a case falling more clearly within both the purpose and the language of the act. Cf. *Missouri v. Kansas Gas Co., Public Service Comm. v. Attleboro Steam & Electric Co., Supra*. The record shows no ground for setting aside or modifying the order. The petition for its review is DENIED.

13 *Dissenting Opinion*

WALLER, *Circuit Judge*, dissenting: In order to set out my views more clearly on this controversy I shall state some facts in addition to those set forth in the main opinion.

Petitioner owns 110 producing gas wells and controls 56,555 acres of natural gas lands in the Monroe Gas Field of Louisiana. It gathers the gas from its wells and also that which it buys from other wells, and, through its own pipe lines, transports same to points within the State of Louisiana where it is delivered to interstate pipe line companies which in turn transport the gas to individual customers and to utilities in other states which then sell the gas to the ultimate consumer. It is the price received in Louisiana for gas, produced in Louisiana, gathered in Louisiana, sold in Louisiana, delivered in Louisiana, and to which all right, title, and interests passes in Louisiana, that the Commission has fixed in the order here under review.

Before the gas is transported by the interstate pipe line companies it is first compressed, and its continuous transmission is thus temporarily arrested as it is made ready for its journey in interstate transportation.

Petitioner, of course, knows that the gas which it produces, gathers, and sells will be transported by the purchasers in interstate commerce by whom it will be sold directly to the ultimate consumers or to the owners of distribution systems who will, in turn, sell it to ultimate consumers, in other states.

In another phase of Petitioner's business it transports and sells some of its gas to points in Louisiana by a pipe line, which, 14 however, runs through a portion of the State of Mississippi.

This activity is definitely in interstate commerce, regulable, and regulated, by the Commission, but it, admittedly, is not in issue here. The appeal is from the order of the Commission reducing the selling price in Louisiana of Petitioner's gas to certain interstate pipe line companies from 7.39¢ to 4.66¢ per thousand cubic feet.

Petitioner is in no wise affiliated with any of these purchasers of its gas, as was the situation in *Peoples Natural Gas Co. v. Federal Power Commission*, 127 F. 2d 153, and in *Illinois Gas Co. v. Public Service Company*, 314 U. S. 498. In neither of those cases was the Appellant a producer of natural gas as is Petitioner in the case at bar?

The Act by its terms applies: (1) to transportation in interstate commerce of natural gas; (2) to the sale of natural gas in interstate commerce for resale for ultimate public consumption; and (3) to natural gas companies engaged in interstate transportation or sale of natural gas.

In *Phillips Petroleum Company v. Ochsner*, 146 F. 2d 138, this Court [footnote 1] noted that under the natural gas contracts in force in the Panhandle Gas Field of Texas "the producer is required to gather the gas at the well and deliver it into the main pipeline of the pipe line company under certain required pressures, \* \* \*. In the present case, Petitioner gathers and delivers its gas to the interstate pipe lines.

It seems that the gathering and transporting to market, are necessary incidents to the production of gas, for there can be no sustained production unless the gas can be collected and carried to market. "Transportation and sale do not include production or gathering." *Colorado Interstate Co. v. Federal Power Commission*, 324 U. S. 581; text 598.

Congress refused in the Act to confer upon the Federal Power Commission the right to regulate the production, or the power to regulate the gathering, of natural gas. The view seems to be quite reasonable that it did not undertake to regulate the gathering of natural gas because it, doubtless, recognized that gathering was a necessary incident to production—a purely local activity. We do not have here a case where the producer is admittedly regulable, whose producing and gathering facilities must be taken into account in the over-all pattern of rate making, as in *Colorado Interstate Co. v. Federal Power Commission, supra*.

Without doubt, had Congress desired to exercise the full extent of its power in the regulation of interstate commerce in natural gas, it could have empowered the Commission to regulate, as isolated activities, also the production and gathering of natural gas when same is produced or gathered with knowledge that sale, shipment, and delivery in interstate commerce was intended, as it did, for example, in Sec. 15a of the Fair Labor Standards Act [See

215a (1), Title 29, U. S. C.] Congress could easily have given the Act a broader scope by conferring the power upon the Commission to regulate any operation or movement of natural gas which might retard its commercial industrial use, or which might otherwise adversely affect interstate commerce. It could have made the Act applicable to any facilities that affect interstate transportation as in the Federal Employers' Liability and Interstate Commerce Commission Acts. It could have defined interstate commerce in natural gas so as to include the production, or the gathering, of natural gas for commerce to the same purpose and extent as was done in the Fair Labor Standards Act wherein "goods produced for commerce" were placed within the coverage of the Act. Instead of doing that, Congress expressly stated that the provisions of the chapter should be applicable only to three specific situations, viz., the transportation in interstate commerce, the sale in interstate commerce for resale for ultimate public consumption, and to natural gas companies engaged in such transportation or sale. After outlining the scope of the Commission's power, Congress then set out the restrictive enactment that the Act should not apply to any other transportation or sale of natural gas nor to the local distribution of natural gas, nor the facilities used for such local distribution, nor to the production or gathering of natural gas. The Act cannot be applicable to the production and gathering of natural gas except as the valuation of its producing and gathering facilities are inherently a part of the value that must be taken into consideration in regulating rates of natural gas companies engaged in transportation and sale of gas in interstate commerce.

17. What is meant by a "sale in interstate commerce"? The Act contains its own definition, and there is no occasion for the Court to invent one: This feature of the Act does not appear to have received attention in the majority opinion nor in *Peoples Natural Gas Co. v. Federal Power Commission, supra*, nor in *Illinois Gas Co. v. Public Service Co., supra*. See, 717a (7), Title 15, U. S. C., defines "interstate commerce" to mean "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof. \* \* \*." This unapplied definition presents the main point of divergence between my views and those of the majority. The sale made by the Petitioner here was not between any point in the State of Louisiana and any point outside of Louisiana. It was not a contract of sale in Louisiana with delivery of the commodity to be in another state. The sale was made and the title passed in Louisiana. Petitioner had no further right, title, interest, or concern in such gas after the delivery to the purchaser. Nor did its interstate pipe line pur-

chaser have any further obligation to Petitioner to carry or to safely deliver, the gas which Petitioner had delivered to it. There was no continuity of responsibility or liability for the subsequent and safe carriage of the gas as is the case in ordinary movements of commodities in interstate commerce. Petitioner had no interest in what happened to the gas after its delivery to purchaser. Delivery, which is an element of every sale, was completed in Louisiana without the use of any facilities of interstate commerce. I can see no sale in interstate commerce, as defined by the Act, made by the Petitioner. True, it made a sale, with knowledge that the gas was intended to be transported and sold by its purchaser in interstate commerce, but that is not a sale by it in interstate commerce within the coverage of the Act.

18 What is meant by "transportation in interstate commerce"? Under the definition of interstate commerce in the Act it can only mean the transportation from a point in Louisiana to a point outside that state in the carriage of natural gas. Petitioner is not a carrier of gas for hire such as would characterize it as a part of an interstate system of interstate transportation. Its function is analogous to that of a tram road, or dummy line, of a saw mill that locally hauls its own lumber to the common carrier.

The language of the Act that the provisions of this chapter shall apply "to natural-gas companies engaged in such transportation or sale," does not sustain the Commission's contention in the present case because the Petitioner does not sell nor transport the gas, upon which the price is sought to be regulated, except in the State of Louisiana and, therefore, is not a natural-gas company under the definition in Sec. 717a(6), Title 15, U. S. C.<sup>1</sup> The "sale of natural gas in interstate commerce for resale" means a sale, calling for delivery across state lines, to a purchaser which resells to the ultimate consumer, as, for instance, a sale by a pipe line customer of Petitioner in Louisiana to the owner of a gas distribution system in Memphis who will in turn resell it to its consumers.

19 It seems to require an artificial conjoining of phrases, or verbal manipulation, to place into the Act this interpretation by the majority:

[The Act] "shall not apply to the facilities used for such [i.e. local] distribution or to the production or gathering of natural gas."

The language of the Act is not that it shall not apply to "the facilities used for the production or gathering of natural gas".

1 "Natural gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." See, 717a(6), Title 15, U. S. C.

but that it "shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." "The facilities used to the production or to the gathering of natural gas" would be such an unusual or odd expression that it ought not to be ascribed to Congress. The term "facilities" can only refer to the facilities used in the local distribution of gas in cities and towns. I am unable to accept the view that the Act merely withheld from the Commission "jurisdiction over properties" or facilities of producers and gatherers.

The construction of the Act given to it by the Power Commission and the majority of this Court appears to nullify the plain intent of Congress to except from the operation of the Act the production and the gathering of gas when the producer, gatherer, and the seller, neither transports nor sells gas in interstate commerce, and when the Act nowhere gives the Commission jurisdiction to regulate the production or the gathering and intrastate transportation of gas merely because producer or seller or gatherer knows that

the purchaser of such gas will in turn transport it in interstate commerce and sell it in another state chiefly to those who will there resell it to the ultimate consumer.

Congress had the power to have regulated both the production and the intrastate gathering of natural gas when produced and gathered with knowledge that it would be transported or sold in interstate commerce in the same fashion that it did in the Fair Labor Standards Act. But in the present Act Congress wholly failed to take over the regulation of these two phases of the industry, and, in the face of the statute and in the absence of appropriate legislation they must be deemed to be only local activities.

Natural gas must be transported to market to the same extent as any other commercial production. The gathering and transporting of gas to a place of sale is as essential to the production of gas as is the drilling of a gas well. Regulation of the production of natural gas is forbidden, but if the Commission is given the power to regulate the price which the producer and gatherer receives at the end of the intrastate journey at the pipe line of the interstate purchaser, it is also given the power to regulate production. If the price which the producer and gatherer gets for the gas which he has produced and gathered is less than it costs to produce it, production will be thereby regulated indirectly, but, withal, as effectively as if Congress had expressly conferred such authority upon the Commission.

The custom in the industry is for the producer to bring his gas to the interstate pipe line for market. The farmer, for instance, who produces cotton transports it to market where, let us assume, he has previously agreed to sell it to a New

England cotton mill. He produced, gathered, and transported that cotton to market in Louisiana and even though he knew that the cotton was to be shipped to New England, he would not be engaged in the transportation or sale of cotton in interstate commerce, and, therefore, regulable, unless Congress had, declared otherwise. Congress has the power to regulate enterprises which, in isolation, are purely local, provided such enterprises are determined by Congress to substantially affect interstate commerce or the free flow of goods in commerce. This Congress did not attempt to do in the statute under consideration.

Believing that courts should construe statutes instead of making them, I am unwilling to participate in writing into the Act that which Congress expressly undertook to keep out, even if by so doing a better statute would result.

22 In United States Circuit Court of Appeals

No. 10701,

INTERSTATE NATURAL GAS COMPANY, INCORPORATED,

versus

FEDERAL POWER COMMISSION, LOUISIANA PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, CITY OF BATON ROUGE, LOUISIANA.

*Judgment—Filed August 3rd, 1946.*

This cause came on to be heard on the petition of Interstate Natural Gas Company, Incorporated, for a review of the order of the Federal Power Commission, entered April 27, 1943, in consolidated proceedings entitled "Louisiana Public Service Commission, Complainant, v. Interstate Natural Gas Company, Incorporated, Defendant, Docket No. G-132"; and "In the Matter of Interstate Natural Gas Company, Incorporated, Docket No. G-149", and was argued by counsel:

On consideration whereof, it is now hereby ordered, adjudged and decreed by this Court that the petition of Interstate Natural Gas Company, Incorporated for its review be, and the same is hereby, denied.

"Waller, Circuit Judge, dissents."

## In United States Circuit Court of Appeals

*Mandate of Supreme Court Filed October 21, 1947.*

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit,

(SEAL)

GREETING:

WHEREAS, lately in the United States Circuit Court of Appeals for the Fifth Circuit, in a cause between Interstate Natural Gas Company, Petitioner, and Federal Power Commission, Louisiana Public Service Commission, et al., Respondents, No. 10701, wherein the judgment of the said Circuit Court of Appeals, entered in said cause on the 3rd day of August, A. D. 1946, is in the following words, viz:

"This cause came on to be heard on the petition of Interstate Natural Gas Company, Incorporated, for a review of the order of the Federal Power Commission, entered April 27, 1943, in consolidated proceedings entitled 'Louisiana Public Service Commission, Complainant, v. Interstate Natural Gas Company, Incorporated, Defendant, Docket No. G-132'; and 'In the Matter of Interstate Natural Gas Company, Incorporated, Docket No. G-149', and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition of Interstate Natural Gas Company, Incorporated, for its review be, and the same is hereby, denied.

'Waller, Circuit Judge, dissents.'

24 as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the SUPREME COURT OF THE UNITED STATES by virtue writ of certiorari, . . . . . agreeably to the act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of Our Lord one thousand nine hundred and forty-six, . . . . . the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged . . . . . by this Court that the judgment . . . . . of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, affirmed.

AND IT IS FURTHER ORDERED, That this cause be, and the same is hereby, remanded to the said Circuit Court of Appeals.

June 16, 1947.

25 You, therefore, are hereby commanded that such ..... proceedings be had in said cause, ..... as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari ..... notwithstanding.

WITNESS, the Honorable FRED M. VINSON, Chief Justice of the United States, the seventeenth ..... day of October ..... in the year of our Lord one thousand nine hundred and forty-seven.

(Signed) CHARLES EEMORE CROPLEY,  
*Clerk of the Supreme Court of the United States.*

26 In the United States Circuit Court of Appeals

*Motion for an Order of Distribution of Funds—*

*Filed December 22, 1947*

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Interstate Natural Gas Company, Incorporated, petitioner above named, respectively shows:

1. On April 27, 1943, the Federal Power Commission entered an order, modified June 9, 1943, reducing the rates which petitioner may charge in its sales of natural gas for resale. Certain parts of said order were made the subject of a review proceeding before your Honorable Court, and pursuant to Sec. 19(e) of the Natural Gas Act (52 Stat. 833, 15 U. S. C. Sec. 717r(e)), petitioner requested a Stay of the Commission's order pending said review proceedings.

2. Your Honorable Court on June 14, 1943, granted said Stay upon the following conditions:

27 "(1) The monthly difference between payments to Petitioner under existing rates or arrangements and those required under the Order of the Commission shall be promptly paid into the registry of this court under the provisions of Sec. 995 of the Revised Statutes of the United States (28 U. S. C. A. Sec. 851). For gas billed in any particular month the deposit shall be made not later than the 30th day of the

succeeding month, the first deposit to be made not later than July 30th, 1943, for the month of June, 1943.

The amounts so deposited shall remain on deposit, subject, however, to the further Order or Orders of this court, to be returned to such ultimate consumers of gas, or other persons, to whom the court shall find the same should be returned, as contemplated by the provisions of the Natural Gas Act. Upon receipt of each deposit the Clerk of this Court shall notify the Federal Power Commission stating the amount of such deposit and the total amount then on deposit in said fund.

(2) The entire expenses of impounding these funds shall be borne by Petitioner.

(3) No interest shall be charged Petitioner upon such impounded funds unless allowed upon application hereafter made by Respondents or any of them. Such future applications may be made only

- (a) if and when Petitioner fails to prosecute this error proceeding with due diligence, or
- (b) if and when this court shall enter its decree and order, sustaining the above Order of the Commission and shall deny any petition for rehearing which may be filed thereto.

Any interest allowed hereafter shall be at such rates as will be fixed by further Order of the Court.

(4) Full power and jurisdiction is reserved to cancel or modify this Order and to enter any other orders (with or without application of the parties) to protect or to promote the rights and interests of the parties to this litigation and of the ultimate consumers or other parties financially interested in the impounded funds."

3. Pursuant to said order, petitioner did and has through the month of October, 1947, so deposited in the Registry of this Court.

4. After your Honorable Court on August 3, 1946, denied the Petition for Review, petitioner secured review, on certiorari directed to your Honorable Court, by the United States Supreme Court in its Docket No. 733, October Term, 1946. On June 16, 1947, the Supreme Court affirmed the dismissal of the review proceedings by your Honorable Court; and on October 13, 1947, the Supreme Court denied petitioner's Petition for Rehearing of its order of June 16, 1947; and petitioner is informed that the mandate of the Supreme Court therein was issued and received by your Honorable Court on October 21, 1947.

5. The funds now on deposit in your Honorable Court represent moneys collected from the following:

United Gas Pipe Line Company, for the account of Memphis Natural Gas Company, Shreveport 92, Louisiana

Southern Natural Gas Company, Watts Building, Birmingham, Alabama

Mississippi River Fuel Corporation, 407 North 8th Street, St. Louis 1, Missouri

6. Gas delivered in the month of October has been billed at the rates fixed by the order of the Federal Power Commission and, therefore, no further deposit will be made.

7. Petitioner will furnish at the hearing hereon verified statements showing its computation of the amount due to each of the foregoing.

8. Petitioner is serving upon said customers and the Federal Power Commission, as well as upon those parties respondent all of whom are listed on the attached affidavit of service, notice of the filing of and a copy of this petition.

29 9. Petitioner hereby respectfully requests your Honorable Court to set the matter of the distribution of the funds paid into the Registry of the court as aforesaid for hearing and to notify the parties in interest of the date on which such matter will be heard.

10. That in the hearing hereon petitioner respectfully requests that the matter of the distribution of the funds to the three pipe line companies involved herein be fully disposed of; and that, upon a showing that all funds to which said three pipe line companies are entitled have been distributed or will be distributed thereto, that an order issue from your Honorable Court absolving petitioner from further liability in respect thereof.

11. No previous application has been made for the relief or action herein requested or similar relief or action.

**WHEREFORE PETITIONER PRAYS:**

1. That an order be issued directing the aforesaid three customers of petitioner and the Federal Power Commission to appear at a hearing in the matter of the distribution of the funds as herein set forth and that said companies, if they so desire, file on or before the said hearing date verified statements setting forth their respective claims to the distributive shares of the funds paid into the Registry of your court.

2. That as a result of said hearing, distribution of the funds as ordered by your Honorable Court be made and that upon filing by the Clerk of your court proof of said distribution, petitioner shall be forever completely absolved from further liability in respect thereof.

3. That the court grant such other and different relief in the premises as may seem just and proper.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED

By Wm. A. DOUGHERTY,  
*Vice President.*

WILLIAM A. DOUGHERTY

30 Rockefeller Plaza  
New York 20, New York

AEDEN T. SHOTWELL  
Omachita National Bank Bldg.  
Monroe, Louisiana

HENRY P. DART, JR.

HENRY GRADY PRICE  
1008 Canal Building  
New Orleans, Louisiana

JAMES LAWRENCE WHITE

30 Rockefeller Plaza  
New York 20, New York

*Attorneys for Petitioner*

31. *Duly sworn to by William A. Dougherty jurat omitted in printing.*

32. *Affidavit of Service*

STATE OF NEW YORK

County of New York ss:

Before me, a notary public in and for said county and state, personally appeared JAMES LAWRENCE WHITE, who upon being duly sworn did depose and swear that he has caused copies of the foregoing motion to be made upon each of the persons whose names appear below, by causing the same to be deposited properly addressed thereto with postage prepaid in the United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

United Gas Pipe Line Company.

(For the Account of Memphis Natural Gas Company)

Shreveport, 92, Louisiana

Southern Natural Gas Company  
 Watts Building  
 Birmingham, Alabama

Mississippi River Fuel Corporation  
 407 North Eighth Street  
 St. Louis 1, Missouri

Leon M. Fuquay, Secretary  
 Federal Power Commission  
 Washington 22, D. C.

Charles E. McGee, Esq.  
 Assistant General Counsel for Federal Power  
 Commission, Respondent

1800 Pennsylvania Avenue, N. W.  
 Washington, D. C.

Edward Rightor, Esq.  
 Counsel for the City of New Orleans, Respondent  
 Canal Building  
 New Orleans 12, Louisiana

Warren O. Coleman, Esq.  
 Attorney for the City of New Orleans, Respondent  
 Whitney Building  
 New Orleans 12, Louisiana

Francis P. Burns, Esq.  
 Attorney for the City of New Orleans, Respondent  
 American Bank Building  
 New Orleans 12, Louisiana

33 W. C. Perrault, Esq.  
 Attorney for Louisiana Public Service Commission  
 Box 4005  
 State Capitol  
 Baton Rouge, Louisiana

Roland Kizer, Esq.  
 Attorney for the City of Baton Rouge, Louisiana  
 709 Louisiana National Bank Building  
 Baton Rouge, Louisiana

Original

Signed—JAMES LAWRENCE WHITE

Subscribed and sworn to before me, this 16th day of December,  
 1947.

ANTHONY W. NEWMAN  
 Notary Public

(Seal)

*Affidavit of Service*

STATE OF NEW YORK  
County of New York { ss:

Before me, a notary public in and for said county and state; personally appeared WILLIAM A. DOUGHERTY who, upon being duly sworn, did depose and swear that he made service of a copy of the foregoing motion to be made upon Memphis Natural Gas Company, Memphis, Tennessee, by causing the same to be deposited, properly addressed thereto with postage prepaid, in a United States Post Office regularly maintained by the Government of the United States.

(Signed) WILLIAM A. DOUGHERTY

Subscribed and sworn to before me this 22nd day of December, 1947.

(Signed) ANTHONY W. NEWMAN

(Seal)

*Notary Public*

N. Y. Co. Clk's No. 27, Reg. No. 56-N-9  
Registered in Westchester County  
Commission Expires March 30, 1949.

35 In the United States Circuit Court of Appeals

*Motion of Memphis Light, Gas & Water Division for Leave to Intervene as Petitioner—Filed January 26, 1948*

Now comes Memphis Light, Gas & Water Division of the City of Memphis, created by Chapter 381 of the Private Acts of Tennessee for the year 1939, and moves the Court for leave to intervene as a separate petitioner in this action for the purpose of asserting its right to a distribution of a part of the funds in the custody of the Court in this cause.

For grounds of said motion, your petitioner shows that it is a branch or division of the City of Memphis, created for the purpose of purchasing and operating plants for the sale and distribution of gas, electricity and water to residents of the City of Memphis and Shelby County, Tennessee, and is now engaged in so doing; that petitioner purchases its requirements of natural gas from the Memphis Natural Gas Company, who operate a pipe line between

said city and Monroe, Louisiana, connected with other pipe lines, including those of the United Gas Pipe Line Company and the Interstate Natural Gas Company, original petitioners herein; that your petitioner is owned by and is a part of the City of 36 Memphis, Tennessee, and its citizens, the citizens of said city and Shelby County, Tennessee, being customers of your petitioner to whom it sells at retail natural gas at rates fixed by the said City of Memphis; that petitioner is not subject to regulatory control either by the Federal Power Commission or by the Railroad and Public Utilities Commission of the State of Tennessee.

Your petitioner further shows that since the entry of the order of April 27, 1943, by the Federal Power Commission, which was reviewed and affirmed by this Court in this cause, your petitioner has paid to its immediate supplier of natural gas, the Memphis Natural Gas Company, the sum of \$387,347.00, which sum has been deposited by the Interstate Natural Gas Company in this cause pursuant to this order; and that under the terms of said order it was provided:

"The amounts so deposited shall remain on deposit, subject however, to the further order or orders of this Court, to be returned to such ultimate consumers of gas, or other persons to whom the Court shall find, the same shall be returned as contemplated by the provisions of the Natural Gas Act."

Your petitioner further alleges, it being owned by the citizens of the City of Memphis who are its customers, that it is the ultimate consumer of gas contemplated in said order and is the person entitled to \$387,347.00 of the funds in the hands of this Court for the reasons set out in its proposed petition of intervention attached hereto.

Your petitioner further shows that it has been advised that the Interstate Natural Gas Company has filed a motion for an order of distribution of funds in this cause, which has been set for hearing on January 28, 1948; and that representation of your petitioner's interest in said funds is or may be inadequate, and the applicant may be bound by a judgment in this action on said motion; and your petitioner is so situated as to be adversely affected by a distribution or other disposition of the property in the custody of 37 this Court, unless its interest therein is properly presented to said Court.

WHEREFORE, your petitioner shows that it has served this motion to intervene upon all parties known to it to be affected thereby as shown in certificate of service attached hereto, and attaches hereto a copy of the petition of intervention it proposes to file for which the intervention is sought; and your petitioner prays that an order

be entered permitting it to intervene herein and file the petition of intervention so attached.

MEMPHIS LIGHT, GAS & WATER DIVISION  
*Applicant for Intervention*

By THOS. H. ALBIN  
*President*

SAMEEL S. PHARR  
*Vice President*

I. J. LICHTERMAN  
*Commissioner*

CHAS. C. CRABTREE

WESLEY HARVEY

*Attorneys for Applicant*

*Duly sworn to by THOMAS H. ALLEN  
jurat omitted in printing.*

39. To:

Interstate Natural Gas Co.  
c/o Wm. A. Dougherty  
39 Rockefeller Plaza  
New York 20, N. Y.

United Gas Pipe Line Co.

Shreveport, La.

Southern Natural Gas Co.

Watts Bldg.

Birmingham, Ala.

Memphis Natural Gas Co.

Sterick Bldg.

Memphis, Tennessee

Mississippi River Fuel Corp.

407 N. 8th St.

St. Louis 1, Mo.

Leon M. Fuquay, Secretary  
Federal Power Commission  
Washington 22, D. C.

Charles E. McGee, Esq.

Asst. Gen Counsel for

Federal Power Commission, Respondent

1800 Pennsylvania Ave., N. W.

Washington, D. C.

Edward Rightor, Esq.

Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, La.

Warren O. Coleman, Esq.

Atty. for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, La.

Franejs P. Burns, Esq.

Atty. for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, La.

W. C. Perrault, Esq.

Atty. for Louisiana Public Service Commission  
Box 4005  
State Capitol  
Baton Rouge, La.

Roland Kizer, Esq.

Atty. for the City of Baton Rouge, La.  
709 Louisiana National Bank Bldg.  
Baton Rouge, La.

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the United States Court Building, City of New Orleans, on the 28th day of January, 1948, at 10 o'clock in the forenoon of that day; or as soon thereafter as counsel can be heard.

CHAS. C. CRABTREE

*Attorney for Memphis Light, Gas &  
Water Division, Applicant for  
Intervention*

507 Union Planters Bank Building  
Memphis, Tennessee

STATE OF TENNESSEE

County of Shelby

Before me, a Notary Public in and for said County and State, personally appeared Thomas H. Allen, who, upon being duly sworn, did depose and swear that he has caused copies of the foregoing motion and notice to be served upon each of the persons whose names appear in said notice by causing the same to be deposited

properly addressed thereto with postage prepaid in the United States Post Office regularly maintained by the Government of the United States.

THOS. H. ALLEN.

Subscribed and sworn to before me, this 24 day of January, 1948.

WESLEY HARVELL

My Commission expires: Oct. 2nd, 1949

41 In the United States Circuit Court of Appeals

*Petition of Intervention of Memphis Light, Gas & Water  
Division—Filed January 26, 1948*

Now comes the Memphis Light, Gas & Water Division of the City of Memphis, created by Chapter 381 of the Private Acts of Tennessee for the year of 1939, and leave of Court first having been obtained files this, its Petition of Intervention in this action for the purpose of asserting its right to a distribution of a part of the funds, now in the custody of the Court in this cause.

42 Your Petitioner would show that it is a branch, or Division of the City of Memphis, a municipal corporation, created for the purpose of purchasing and operating plants for the sale and distribution of gas, electricity and water to the residents of the City of Memphis and Shelby County, Tennessee and is now engaged in so doing:

That Petitioner purchases its requirements of natural gas from the Memphis Natural Gas Company, Incorporated, who operates a pipeline between Memphis, Tennessee and Monroe, Louisiana; and the said Memphis Natural Gas Company has pipe lines connected with pipe lines of other companies including those of the United Pipe Line Gas Company and the Interstate Natural Gas Company;

That the Memphis Light, Gas & Water Division is owned by the citizens and residents of Memphis, Tennessee to whom it sells and distributes at retail natural gas at rates fixed by the City of Memphis, a municipal corporation and that neither your Petitioner nor the City of Memphis is subject to regulatory control either by the Federal Power Commission or by the Railroad & Public Utilities Commission of the State of Tennessee.

Your Petitioner would further show that the Attorney for the Federal Power Commission has furnished your Petitioner with a copy of an allegation of the money that is now being held by the Court, of which was impounded by the Court, a copy of this schedule; or allegation is attached hereto and made Exhibit "A" to this Petition, and under this allegation, which purports to be an equitable distribution of the funds impounded by the Court, the Memphis Light, Gas & Water Division is entitled to \$387,347 as their prorata part of the money in excess of the rate fixed by the Federal Power Commission in their order of April 27, 1943, and which order was affirmed by this Court and the United States Supreme Court.

Your Petitioner further alleges, it being owned by the citizens of the City of Memphis who are its customers, that it is the ultimate consumer of gas contemplated in said order and is the person entitled to \$387,347 of the funds in the hands of this Court.

Your Petitioner further alleges that the rate now charged the Memphis Light, Gas & Water Division by the Memphis Natural Gas Company was fixed as a result of an investigation made by the Federal Power Commission into the earnings of and the cost paid for gas purchased by the Memphis Natural Gas Company. This investigation was made during the years of 1942 and 1943 and resulted in an order by the Federal Power Commission dated the 31st day of August, 1943, which is made Exhibit "B" to this Petition.

Supplementing the order of the Federal Power Commission, they rendered an opinion dated Sept. 21, 1943, which opinion is No. 104 of the Federal Power Commission and made Exhibit "C" to this Petition.

Your Petitioner alleges that by the wording of the opinion of the Federal Power Commission, the Federal Power Commission found the following facts:

44. "The United Gas Pipe Line Company made a reduction effective April 1, 1943, in the cost of the gas sold to the Company, as a part of its settlement in an investigation of its rates (Docket No. G-148). In its Opinion No. 90, in that docket, the Commission called to the attention of companies receiving reductions in cost of gas, the obligation to "pass on" this reduction to their customers.

To accomplish this, conferences between Company representatives and Commission staff members were held at intervals during 1943. Studies made and data submitted by the Company during these negotiations relating to 1942 operation, revenues and expenses indicate that in addition to the saving produced by the lowered price of gas purchased from United Gas Pipe

Line Company amounting to \$140,174, there were excess earnings of \$101,649 over a 6½% return on a rate base derived from book cost. A reduction in rates calculated to eliminate excess earnings of \$101,649 will amount of \$169,415 since the savings in Federal income taxes at current tax rate levels of 40% will amount to \$67,766.

In addition to the indicated reduction composed of these items, the discussions and analyses showed that the Southwest Gas Producing Company, Inc., an affiliate supplying a part of the Company's requirements from the Monroe field, also earned a return in excess of 6½% in 1942. When this fact was brought to the attention of that company, its voluntarily made reduction in the price of its gas amounting to \$52,812, annually, based on 1942 deliveries.

All these factors combine to indicate that a reduction of \$362,400 could be made without reducing the return below 6½% on the rate base. As a result of these studies and discussions, and based upon the foregoing considerations, the Company agreed to and later filed supplements to its rate schedules making a reduction of at least \$352,902.

Your Petitioner would further show that at the time of the rendering of Opinion #104, of the Federal Power Commission, and at the time of the conferences between the Federal Power Commission, Memphis Natural Gas Company, and the Memphis Light, Gas & Water Division, all of the parties were familiar with the order of the Federal Power Commission dated April 27, 1943, as modified June 9, 1943, which order required the Interstate Natural Gas Company to reduce its rates for gas sold to its customers and of the Court Order dated June 14, 1943 restraining the enforcement of the order of the Federal Power Commission and impounding the funds, which are now being held by this Court in this cause.

Your Petitioner further avers that the matter of the rate reduction of the Interstate Natural Gas Company was discussed thoroughly and an understanding was reached as evidenced in Federal Power Commission's Opinion #104, page 9, which opinion with respect to this particular matter is as follows:

"The Company also purchases gas from Interstate Natural Gas Company, Inc. During the course of the negotiations the Commission issued its investigation of the Interstate Natural Gas Company, Inc. (Docket No. G-149). This order is now in litigation. Representatives of the Company have stated, however, that any future benefit the Company may receive by rea-

son of the aforesaid rate-reduction order will be passed on to its customers."

Your Petitioner would show that the Memphis Natural Gas Company is now estopped to claim any interest in this fund by reason of their position and agreement before the Federal Power Commission and of the opinion of the Federal Power Commission, #104 based thereon, from which opinion the Memphis Natural Gas Company did not see fit to appeal or question, and that the rate then fixed was determined in the light of the possibility of the sustaining of the Federal Power Commission Order of April 27, 1943 as modified June 9, 1943 based upon the understanding

that the Memphis Natural Gas Company would refund the money impounded by the Court in this cause to its customers should the order of the Federal Power Commission be sustained.

Your Petitioner would further show that the Memphis Natural Gas Company was present in informal conferences with the Federal Power Commission in the City of Memphis, which preceded the order issued by the Federal Power Commission fixing the present rate schedule of the Memphis Natural Gas Company from which the Memphis Light, Gas & Water Division purchased its supply of gas and at these conferences, it was understood by all parties, any further reduction in field price for gas would be passed on in toto to the customers of the Memphis Natural Gas Company.

In support of this allegation, your Petitioner exhibits affidavit of J. H. Johnson, which is marked Exhibit "D" to this Petition.

Your Petitioner further avers and show that if this Court should find that the question of who is entitled to the sum impounded amounting to \$387,347, has not been settled by Opinion #104 of the Federal Power Commission, or by previous negotiations and understanding between the parties, and that this Court has no jurisdiction to order the distribution of the funds in question, the funds should be held by this Court until the rights of persons to said fund can be adjudicated and determined by Court or Commission having jurisdiction thereof.

Petitioner further shows that under all rules of equity that they are the ultimate customer under the meaning of the Natural Gas Act, and they are entitled in the last analysis to the funds 47 now held by this Court to the extent of \$387,347.

WHEREFORE, YOUR PETITIONER PRAYS

That a copy of this bill be served on the Interstate Natural Gas Company and that upon a hearing of this Petition, Petitioner be granted an order directing that Clerk of this Court pay to the Memphis Light, Gas & Water Division the sum of \$387,347 and

that it be granted such further, other and general relief as it maybe entitled to in equity or under all the facts and the law.

BOARD OF LIGHT, GAS & WATER COMMISSIONERS OF  
MEMPHIS LIGHT, GAS & WATER DIVISION

By THOS. H. ALLEN,  
*President.*

SAMUEL S. PHARR,  
*Vice-President.*

I. J. LICHTERMAN,  
*Commissioner.*

CHAS. C. CRABTREE,  
WESLEY HARVELL,

Attorneys for Memphis Light, Gas &  
Water Division.

48 *Duly sworn to by Thos. H. Allen jurat omitted in printing.*

## INTERSTATE NATURAL GAS COMPANY

To	Mfg Sales 1946	Percent	Refunds
<b>To Mississippi River Fuel Company</b>			<b>\$1,320,978</b>
Sales to Other Utilities:			
Arkansas Power & Light Co.	1,794,402	3.963	\$ 52,350
Arkansas Louisiana Gas Co.	716,638	1.583	20,911
Missouri Natural Gas Co.	559,018	1.234	16,391
St. Louis County Gas Co.	2,892,292	6.388	84,384
Laclede Gas Light Co.	8,781,903	19.396	256,247
Illinois Power Co.	1,716,150	3.790	50,065
Union Electric Co. of Ill.	271,510	.599	7,913
Total Sales to Other Utilities	16,731,613	36.953	488,141
Direct Consumer Sales (Industrial)	28,546,937	63.047	832,837
Total Gas Sales	45,277,650	100.000	\$1,320,978
 To Southern Natural Gas Company			 <b>\$581,721</b>
Sales to Other Gas Utilities:			
Atlanta Gas Light Co.	37,957,102	48.00	279,226
Georgia Power Co.	2,556,079	3.60	20,942
Alabama Gas Company	11,974,625	16.88	98,195
Alabama Power Co.	442,096	.62	3,607
Birmingham Gas Co.	3,679,693	5.18	30,133
Municipality of Pell City	23,042	.03	175
Mississippi Gas Company	3,595,817	5.07	29,493
Mississippi Power & Light Co.	829,822	1.17	6,806
Vicksburg Municipal Gas System	603,674	.85	4,944
Total Gas Sales to Utilities	57,761,860	84.40	473,521
Direct Consumer Sales (Industrial)	13,196,692	18.60	108,260
Total Sales	70,958,552	100.00	\$ 581,721
 To United Gas Pipe Line Company			
Memphis Natural Gas Company			<b>\$563,741</b>
Sales to Other Utilities:			
Memphis Light Gas and Water Div.	18,609,540	68.71	387,347
West Tennessee Gas Co.	1,137,407	4.34	24,466
Arkansas Power & Light Co.	273,943	1.05	5,919
Mississippi Power & Light Co.	3,835,089	14.63	82,475
Total Sales to Other Utilities	23,255,979	88.73	500,207
Direct Consumer Sales			
(Memphis Generating Co.)	2,954,313	11.27	63,534
Miscellaneous Sales	6,327		
Total Sales	26,216,619	100.00	<b>563,741</b>

## Exhibit "B"

United States of America  
Federal Power Commission

Commissioners { Leland Olds, Chairman, Claude L. Draper and  
John W. Scott, Basil Manly not participating.

August 31, 1943

In the Matter of  
MEMPHIS NATURAL GAS COMPANY

*Order Making Effective Reductions in Rates*

It appearing to the Commission that:

- (a) Following conferences with representatives of the Commission, Memphis Natural Gas Company, on August 9, 1943, filed the Supplemental Rate Schedules referred to in paragraph (A), below, by which it made certain revisions in its rates for the sale of natural gas for resale, representing an estimated reduction of approximately \$352,900;
- (b) Memphis Natural Gas Company has made application that the reduced rates be allowed to take effect for all bills rendered for natural gas deliveries on and after July 26, 1943, and it is in the public interest that such retroactive effective date be established;

Now, therefore, in view of the foregoing and for the reasons set forth in its Memorandum Opinion (Opinion No. 104);

The Commission *orders* that:

- (A) Supplement No. 3 to Memphis Natural Gas Company Rate Schedule No. 2; Supplement No. 3 to Memphis Natural Gas Company Rate Schedule No. 3; Supplement No. 2 to Memphis Natural Gas Company Rate Schedule No. 5; Supplement No. 3 to Memphis Natural Gas Company Rate Schedule No. 7; and Supplement No. 1 to Memphis Natural Gas Company Rate Schedule No. 8, be and they are hereby allowed to take effect for all bills rendered for natural gas deliveries on and after July 26, 1943;
- (B) The aforesaid Supplemental Rate Schedules shall be deemed to have been filed and published in compliance with the Natural Gas Act;

51. (C) This order is without prejudice to any findings or orders which may be made by the Commission in any proceedings now pending, or hereafter instituted, by or against the Applicant.

By the Commission.

LEON M. FUQUAY,  
*Secretary.*

52

*Exhibit "C"*

United States of America,  
Federal Power Commission

Opinion No. 104

In the Matter of

MEMPHIS NATURAL GAS COMPANY

*Memorandum Opinion*

BY THE COMMISSION:

Following conferences between representatives of the Commission and of the Memphis Natural Gas Company,<sup>1</sup> at some of which representatives of the latter's customers were present, the Company filed with the Commission on August 9, 1943, supplements to its rate schedules then on file. Such supplements will effect a saving of \$352,900 to purchasers of natural gas for resale. The Commission has accepted these supplements for filing and, by order entered August 31, 1943, made them applicable to all deliveries on or after July 26, 1943.

The basis upon which this reduction in rates was made and the manner in which it was achieved are matters of public interest. This memorandum opinion is issued for the purpose of making these matters a public record.

53

HISTORY OF NEGOTIATIONS

The negotiations leading to the filing of the reduced rates followed Commission dismissal of the complaint of Arkansas Department of Public Utilities (Docket No. G-262). This complaint was dismissed upon petition by that Department, following the filing of a \$5,000 annual reduction in rates to the Arkansas Power & Light Company by the Company. Representatives of the Commission and of the Company at that time agreed that in the near future, par-

<sup>1</sup> Hereinafter sometimes referred to as the "Company."

ticularly if the Company received any savings in the cost of gas purchased through Commission action, the Company would voluntarily enter into conferences with the Commission staff reviewing its entire situation with respect to earnings and rates.

The United Gas Pipe Line Company made a reduction effective April 1, 1943, in the cost of the gas sold to the Company, as a part of its settlement in an investigation of its rates (Docket No. G-148). In its Opinion No. 90, in that docket, the Commission called to the attention of companies receiving reductions in the cost of gas, the obligation to "pass on" this reduction to their customers.

To accomplish this, conferences between Company representatives and Commission staff members were held at intervals during 1943. Studies made and data submitted by the Company during these negotiations relating to 1942 operations, revenues and expenses

indicate that in addition to the saving produced by the lowered price of gas purchased from United Gas Pipe Line

Company amounting to \$140,174, there were excess earnings of \$101,649 over a 6½% return on a rate base derived from book cost. A reduction in rates calculated to eliminate excess earnings of \$101,649 will amount of \$169,415 since the savings in Federal income taxes at current tax rate levels of 40% will amount to \$67,766.

In addition to the indicated reduction composed of these items, the discussions and analyses showed that the Southwest Gas Producing Company, Inc., an affiliate supplying a part of the Company's requirements from the Monroe field, also earned a return in excess of 6½% in 1942. When this fact was brought to the attention of that company, it voluntarily made a reduction in the price of its gas amounting to \$52,812, annually, based on 1942 deliveries.

All these factors combine to indicate that a reduction of \$362,400 would be made without reducing the return below 6½% on the rate base. As a result of these studies and discussions, and based upon the foregoing considerations, the Company agreed to and later filed supplements to its rate schedules making a reduction of at least \$352,902.

#### JURISDICTION

Memphis Natural Gas Company owns and operates a natural gas pipe line system of approximately 305 miles, extending from the Monroe gas field in northeastern Louisiana and thence through southeastern Arkansas, northwestern Mississippi and into and through a portion of western Tennessee. It purchases natural gas in the Monroe field from the Southwest Gas Producing Company, Inc., an affiliated producer, and from the United Gas Pipe Line Company. It transports this gas through its interstate pipe

The system and delivers gas for resale to the Louisiana Power and Light Company in Louisiana, to the Mississippi Power and Light Company in Mississippi, to the Memphis Light, Gas and Water Division of the City of Memphis in Shelby County, Tennessee, and to the West Tennessee Gas Company in other counties in western Tennessee. It also transports and delivers gas directly to the Memphis Generating Company which consumes the gas in the process of the generation of electricity. All of these deliveries and sales, with the exception of the one to the Louisiana Power and Light Company and the one to the Memphis Generating Company, represent the transportation and sale of natural gas in interstate commerce for resale within the meaning of the Natural Gas Act. The Company is, therefore, a natural-gas company as defined by the Act.

56

### RATE BASE

#### *Book Cost of Plant*

The basis accepted by both the Company and the Commission for the determination of the rate base for these informal proceedings was the book cost of the Company's property, as of December 31, 1942. No audit was made by the Commission staff of the Company's books. The Company had contended early in the negotiations that the book cost did not fairly reflect the value of its property, since it had been constructed during a period of low prices. However, for the purpose of setting these rates the Company has agreed to a cost or investment rate base and the Commission has accepted the book cost, in the absence of an audit of original cost of the Company's properties. The amount shown on the Company's books as total cost of utility plant at December 31, 1942, was \$10,795,763.

#### *Accrued Depreciation*

The Company has used, principally, a 25-year life in determining its annual depreciation allowances and accrued depreciation. During the negotiations, the Company representatives suggested that such a life was somewhat shorter than those used by the Commission in other proceedings involving Companies obtaining gas from the Monroe field. It suggested that a 31-year life for transmission property would be consistent with the life used in other proceedings.

57 Instead of the annual depreciation charges and the accrued depreciation shown on the Company's books, the amounts used in the determination of the new rates were based

upon a 31-year life. On this basis the accrued depreciation as of December 31, 1942, was determined to be \$3,776,673.

### *Construction Work in Progress*

The allowance for construction work in progress is based upon the latest available data and includes additions for which material allotments have been granted by the War Production Board and orders placed. In brief, the work is:

Additions to Guthrie compressor station	\$376,468
Additions to Lula compressor station	63,223
Additions to Wilmot compressor station	1,778
Relocation of Greenwood meter station	374
Additions to dwelling houses at Brooks Avenue meter station	537
Vehicles and drag line	5,898
 Total	 \$448,278

Allowances originally requested by the Company for other work contemplated, but for which material has not yet been allocated, are not included.

### *Working Capital*

Working capital is computed by adding to the cost of materials and supplies on hand at December 31, 1942, the amount of \$111,500, one-eighth of the 1942 operating expenses, exclusive of the cost of gas purchased amounting to \$64,012. The determination of working capital in this manner conforms with the practice generally applied by the Commission.

### *Rate Base—Summary*

The rate base for this proceeding was determined as follows:

Book cost of plant December 31, 1942	\$10,795,763
Reserve for depreciation December 31, 1942	3,776,673
 Depreciated plant December 31, 1942	 7,019,090
Construction work in Progress	448,278
Working Capital	175,512
 Rate Base	 \$7,642,880

## RATE OF RETURN

For the purpose of determining the cost of service and the proper rates to be charged for gas, at 6½% rate of return on the above rate base is found to be reasonable and is accepted by the Company. This is consistent with the Commission's findings and decisions in other cases.

## OPERATING REVENUE DEDUCTIONS

The allowances made for operating revenue deductions are based on the Company's actual experience for the year 1942 as shown in its annual report to the Commission subject, however, to adjustments necessary to eliminate abnormalities in the reported 1942 figures. In addition, Company representatives presented data and information in support of claims for increased costs not fully reflected during the year 1942. Agreement as to the appropriate allowances for operating revenue deductions was arrived at after detailed discussion of the matter at conferences attended by the staff and Company representatives. The major items of adjustment are commented upon under individual subheadings below. By the procedure followed in this matter the Company, the consumers, the Commission, and the taxpayers are saved considerable expense that would have been incurred if the matter had proceeded to formal hearings.

### *Increased Operating Expenses*

Information supplied by the Company shows that a general increase of 10% in wages, exclusive of general and administrative salaries, was granted as of June 15, 1942, and the full effect of such increase is not reflected in the 1942 income account. Furthermore, certain additional increases in operating expenses may be expected to result from (1) negotiations currently being conducted regarding further wage increases; (2) hiring additional personnel, and (3) operation of a new dehydration plant and of additional compressor station capacity. An increase of \$54,246 in operating expenses has been accepted as reasonable to provide for these items.

### *Reductions in Cost of Purchased Gas*

By this Commission's Opinion No. 90 and accompanying order (United Gas Pipeline Company, Docket No. G-448), the Company benefited by a reduction of \$140,174 in the cost of its purchased gas. A voluntary reduction in rates by the Southwest Gas Producing Company, Inc., resulted in the reduction of the cost of purchased gas by \$52,812. These amounts have been

deducted from the cost of gas purchased in 1942, in order to reflect the reduced costs in the future.

The Company also purchases gas from Interstate Natural Gas Company, Inc. During the course of the negotiations the Commission issued its Opinion No. 91 and rate reduction order, in the matter of its investigation of the Interstate Natural Gas Company, Inc. (Docket No. G-149). This order is now in litigation. Representatives of the Company have stated, however, that any future benefit the Company may receive by reason of the aforesaid rate-reduction order will be passed on to its customers.

#### *Annual Depreciation Allowance*

The annual depreciation allowance is based on the Company's estimated 31-year life and is harmonized with the accrued depreciation used in determining the rate base. For the year 1942 it is \$365,431.

#### *Taxes*

In the case of taxes other than Federal income, the Company's books do not reflect a normal year's taxes, because of large adjustments relating to prior years. These prior year adjustments 61 have been eliminated and the resulting amount of \$258,512 allowed as representing the best estimate available of the normal recurring amount of taxes other than Federal income taxes.

Concerning Federal income taxes, the Company has accepted the principle that tax-saving arising by reason of a rate reduction should be passed along as part of that reduction. Tax calculations have been made at the rate of 40%, this being the current level for normal and surtaxes. The problem of excess profits taxes is not involved since, according to the best estimates available at the time of the discussions, the Company is not liable for such taxes.

After making appropriate adjustments to income taxes for non-recurring and other abnormal items, it was estimated that \$302,771 represents the Federal income tax liability upon the adjusted 1942 earnings. The saving in Federal income tax attributable to the elimination of excess earnings of \$101,649 was calculated as \$67,766. Deducting this saving, the remainder of \$235,005 is accepted as a proper allowance for Federal income taxes.

The taxes of the Company for 1942 are reduced by reason of a refund of Louisiana gathering taxes of \$27,926 relating to prior years. It is necessary to eliminate this non-recurring item in order to determine the actual tax situation for the year 1942. Accordingly, the appropriate adjustment requires that the allowance for 1942 gathering tax expense be increased by \$27,926 over that actually recorded.

## TOTAL COST OF SERVICE

Taking into account the foregoing adjustments, the cost of service, including all operating revenue deductions and a 6½% rate of return on depreciated book cost, is \$3,799,060, determined as follows:

Operating Expenses:		
Actual in 1942	\$2,554,139	
Add: Refund of Prior Years' Taxes	27,926	
Anticipated Increase in Expenses	54,246	
Deduct: Reduction in Cost of Gas	(192,986)	\$2,443,325
Depreciation		365,431
Taxes other than Federal Income		258,512
Estimated Federal Income Taxes in 1942	302,771	
Less Saving by Rate Reduction	67,766	
Return at 6½% on Depreciated Book Cost		235,005
Total Cost		49,787
		3,799,060

## RATE REDUCTION

The revenue from gas sales in 1942 was \$4,161,461. The excess above the 1942 adjusted cost is \$362,401. The rates filed would have produced a revenue in 1942 of \$3,808,559 and would have resulted in a reduction of \$352,902. This is divided between the customers buying the gas at resale as follows:

63	Amount
Memphis Light, Gas & Water Division	\$131,046
Mississippi Power & Light Company	124,990
Arkansas Power & Light Company	18,358
West Tennessee Gas Company	77,933
Louisiana Power & Light Company	575
	\$352,902

Included in the reduction to the Arkansas Power & Light Company of \$18,358 is \$3,927 that the Arkansas Power & Light Company would have received in 1942 had the rates which became effective November 1, 1942, been effective the entire year. The reduction below the present rates to the Arkansas Power & Light Company is \$14,431 and the total reduction to all customers below present rates is \$348,975.

## NEW RATES

The rates as filed consist of a general rate to be applied to all gas sold, except that resold to certain large industrial consumers, and a separate rate for the latter. The general rate is on a demand

39

and commodity basis, whereas the rate for gas resold to certain large industrial customers is a straight commodity rate. A study indicates that the new rates will reflect revenue in amounts more closely approximating cost than could be accomplished by rates of the old form. The new rates eliminate a wide variation in the Company's present average rates. Each of the purchasers has advised the Commission that both the new rates and its participation in the total reduction as brought about by the new rates are satisfactory to it. The following tabulation shows the comparative, 64 average rates before and after the reduction, based on 1942 deliveries:

	Average Rates in 1942	Average Rates Under New Filing
Memphis Light, Gas and Water Division	16.0¢ per Mcf	15.1¢ per Mcf
Mississippi Power & Light Company	20.3¢ " " "	15.7¢ " " "
Arkansas Power & Light Company	28.1¢ " " "	15.2¢ " " "
Louisiana Power & Light Company	36.5¢ " " "	15.2¢ " " "
West Tennessee Gas Company	25.4¢ " " "	15.8¢ " " "
All resale gas	17.1¢ " " "	15.3¢ " " "

#### DISPOSITION OF SAVINGS WHICH RESULT FROM REDUCED RATES

Just as money impounded during a court proceeding to test the validity of a regulatory commission's order, and representing the difference between prior existing rates and the reduced rates established, belongs to ultimate consumers, so also the savings here resulting from reduced rates belong to ultimate consumers. In *Natural Gas Pipeline Company, et al. v. Federal Power Commission*, 134 F. (2d) 263, 265, the Court said:

That it (the utility serving Nebraska City) and others may know and plan accordingly, we express our conclusion, and our holding, which is *all refunds which petitioners must make, belong to the consumers*, for whose benefit these proceedings were instituted.

Now one or two of these utilities located where no state supervisory commission exists, are endeavoring to seize the fruits of the litigation brought for the consumers and retain the money for their own individual gain. It would be a gross travesty upon the proceedings, if they were to succeed. With their efforts in this respect, we have no sympathy.

The court will make an order on this finding that the money refunded by petitioners belongs to the consumers and none belongs to the utility or utilities.

Savings to purchasers of natural gas for resale, and which result from the application of the reduced rates here under consideration, should be distributed equitably by such purchasers to their ultimate consumers.

The supplements to Memphis Natural Gas Company's rate schedules, as filed, have by order been made effective as of July 26, 1943.

**LELAND OLDS,**

*Chairman.*

**CLAUDE L. DRAPER,**

*Commissioner.*

**BASIL MANLY,**

*Commissioner.*

**JOHN W. SCOTT,**

*Commissioner.*

Dated at Washington, D. C., this

21st Day of September, 1943.

**LEON M. FUQUAY,**

*Secretary.*

66

*Exhibit "D"*

**STATE OF TENNESSEE,**

*County of Shelby*

I, J. Hardie Johnston, Jr., hereby make oath to the following facts:

I was present at all conferences held between representatives of the Federal Power Commission, Memphis Natural Gas Company and its customers, relative to the establishment of new rates for the Memphis Natural Gas Company, under which gas is sold to its various customers; and that the rates established at that time have been in effect since that date and are in effect at this date.

I further state that at the direction of President of Memphis Light, Gas & Water Division, I, in conjunction with Mr. A. J. Luick, made a report relative to the rates and the conferences, and that the following is a direct quotation from this report which was made immediately after the conferences, resulting in Order dated August 31, 1943 and Federal Power Commission Opinion 104:

"Therefore, as a result of the investigations and findings of the Federal Power Commission, certain reductions are definitely assured for the price of gas in the field and further reductions are in prospect. Since however these further reduc-

tions are not definitely assured, no account of them was taken by the Federal Power Commission in determining the amount of the present reduction in rates which would apply to consumers who are buying from Memphis Natural Gas Company. It is the understanding that any reductions which result from the findings of the Federal Power Commission, assuming it to be successful in the pending litigation, are to be passed on by Memphis Natural Gas Company in total amount to its customers.

"It was further suggested by the representatives of the Federal Power Commission that, if and as further reductions are secured in the field prices for gas as a result of the litigation hereinbefore referred to, it would be the opinion of the representatives of the Federal Power Commission that much of such further reduction should apply to the lowering of the demand portion of the schedule. With this in mind, much of the objection to the two-part rate disappears and, in view of the definite desire of Federal Power Commission that this form of rate be applied by Memphis Natural Gas Company, it appeared to be desirable to accept the change in the form of rate. We might mention in passing that none of the other customers who were present at the conferences expressed any opposition to the change in the form and indicated a preference for this type of schedule to the rates which they were now being charged."

The foregoing is a true statement of the facts as they occurred.

This the 24 day of January, 1948.

J. HARDIE JOHNSTON, JR.

Sworn to and subscribed before me this 24th day of Jan., 1948.

WESLEY HARVELL. (Seal)  
Notary Public.

My commission expires:

Oct 2nd, 1949.

## 68 In the United States Circuit Court of Appeals

*Petition of Memphis Natural Gas Company For An Order Permitting It To Intervene and For An Order Directing the Clerk To Pay To It \$5,591,38 and An Order Directing Interstate Natural Gas Company To Pay Direct To Memphis Natural Gas Company \$32,871.44.—Filed January 26, 1948.*

To THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The Memphis Natural Gas Company respectively shows:

1. It is a Delaware corporation owning and operating a pipe line which originates in Louisiana, passes through Arkansas and Mississippi, and terminates in Tennessee. Its general offices are in Memphis, Tennessee. The natural gas owned and transported by it is sold at wholesale in Louisiana, Arkansas, Mississippi and Tennessee to distributing companies. It distributes no gas, as it is engaged exclusively in the interstate transportation of natural gas for resale at wholesale to the various distributing companies which are its customers.

69. It is subject to the jurisdiction of the Federal Power Commission.

Department of Conservation v. Federal Power Commission,  
148 F. 2d 746 (5 C.);

Mississippi Power & Light Co. v. Memphis Natural Gas Co.,  
162 F. 2d 388 (5 C.).

2. From June 1, 1943, the effective date of the stay order, to December 10, 1945, inclusive, the United Gas Pipe Line Company purchased from Interstate Natural Gas Company, Inc. large amounts of gas for the account of the Memphis Natural Gas Company and pursuant to existing contracts which obligated Interstate to sell to United and obligated United to sell to Memphis. A part of the funds now on deposit in this Court represent moneys collected by Interstate from United for the account of Memphis. This is admitted in Paragraph 5 of the motion filed by Interstate for a distribution order. This is admitted also in Opinion No. 91 rendered by the Federal Power Commission on April 27, 1943, requiring Interstate to reduce its rates. The opinion states:

\*\*\* \* \* \* Interstate transports the gas which it buys from such companies in the Monroe field and commingles that gas with gas which it has produced and gathered in the Monroe field, and then transports this commingled gas to the points of sale and delivery in Louisiana to the Mississippi River Fuel

Corporation, Southern Natural Gas Company, and United Gas Pipe Line Company for the account of Memphis Natural Gas Company. The gas transported and sold by Interstate to these three pipe line Companies continues its flow in interstate commerce and, as an established course of business well known to Interstate, is destined for resale for ultimate public consumption in markets outside Louisiana. \* \* \*

The decision of this Court, Interstate Natural Gas Company, Inc. v. Federal Power Commission, 156 F.2d 949, states in a footnote that the gas sold by Interstate is "for account Memphis Natural Gas Company."

70 That part of the impounded funds representing moneys collected by Interstate from United incident to gas sold from June 1, 1943 to December 10, 1945 by Interstate to United, for the account of Memphis is \$323,948.32. Interstate, United and Memphis are in agreement that this figure is correct and Memphis is informed they recognize that it is the owner of said amount.

On April 16, 1945, Interstate and Memphis made a contract whereby the former obligated itself to sell direct to Memphis certain quantities of natural gas, with the result that subsequent to December 10, 1945 Memphis has made direct purchases from Interstate.

That part of the impounded funds representing moneys incident to sales by Interstate to Memphis subsequent to December 10, 1945 and through September, 1947 is \$235,646.06. Interstate and Memphis are in agreement that this figure is correct and Memphis is informed Interstate recognizes that Memphis is the owner of said amount.

The total part of the impounded funds due and payable Memphis incident to gas purchased by United from Interstate for the account of Memphis and incident to gas purchased direct from Interstate by Memphis is \$559,594.38.

In addition to the above amounts there is due Memphis from Interstate \$32,871.44 which has not been deposited in Court. Interstate admits this additional amount to be due Memphis.

3. Memphis has not heretofore been a party to this proceeding, but is now filing this petition to intervene because of its ownership of said part of the impounded funds.

On December 29, 1947 the Clerk of this Court addressed a joint letter to the United Gas Pipe Line Company, Inc., Memphis Natural Gas Company, Southern Natural Gas Company, and 71 Mississippi River Fuel Corporation, advising that the motion filed by Interstate for an appropriate order of distribution of the impounded funds will be heard by this Court on January 28, 1948, and in substance invited the Memphis Natural

Gas Company to make known to the Court its claims. This petition to intervene is filed in response to the Clerk's letter and for the reason that Memphis has a substantial interest in the future proceedings and orders of this Court relating to the impounded funds.

4. The stay order entered by this Court on June 14, 1943 states in part that:

"The amount so deposited shall remain on deposit, subject, however, to the further order or orders of this Court to be returned to such ultimate consumers of gas, or other persons to whom the Court shall find the same should be returned, as contemplated by the provisions of the Natural Gas Act."

The order also states in part that:

"Full power and jurisdiction is reserved to cancel or modify this order and to enter any other orders (with or without application of the parties) to protect or to promote the rights and interests of the parties to this litigation and of the ultimate consumers or other parties financially interested in the impounded funds."

This intervenor, the Memphis Natural Gas Company, respectfully submits that the only lawful and proper order with respect to the part of the impounded funds claimed by it is an order directing the Clerk to distribute and deliver to Memphis said part of the impounded funds. Neither the distributing companies which are customers of the Memphis Natural Gas Company nor ultimate consumers are entitled in this proceeding to an order by this Court directing that any part of the impounded funds be distributed to them. This Court has no jurisdiction or lawful power to enter any order for distribution other than an order directing the Clerk to distribute and deliver to Memphis the above described part of the impounded funds.

The record herein shows that on April 27, 1943 the Federal Power Commission entered an order, modified June 9, 1943, reducing the rates which Interstate could thereafter charge for gas sold to United for the account of the Memphis Natural Gas Company and for gas later sold by Interstate direct to Memphis. Since the entry of said orders by the Federal Power Commission, which were later affirmed by this Court and the Supreme Court of the United States, the reduced rates have been the "just and reasonable rate, \*\*\* to be thereafter observed and in force" etc. The Natural Gas Act, 15 U. S. C. A. 771d. The jurisdiction of this Court is limited to "a review of such order" entered by the Federal Power Commission. The Natural Gas Act, 15 U. S. C. A. 775. This Court has exercised its appellate jurisdiction and has affirmed

the order of the Commission reducing the rate to be charged by Interstate for natural gas sold to the several pipe lines here involved which are customers of Interstate by privity of contract. Said customer pipe line companies are the only parties in privity with Interstate, and there can be no lawful basis for an order directing a distribution of the impounded funds to either distributing companies which are customers of the pipe line companies or to ultimate consumers who are customers of the distributing companies.

The impounded funds represent moneys unlawfully collected by Interstate from Memphis and the other pipe line companies subsequent to the order of the Commission that rates be reduced by Interstate.

73 The sum of \$592,465.82 represents excessive, unlawful and illegal charges paid by United to Interstate for the account of Memphis and paid direct by Memphis to Interstate during the period stated supra. Said money would not have been paid by Memphis except for the stay order of this Court, and Memphis is entitled to receive said sum which represents unlawful overcharges paid by it.

Memphis insists that any order by this Court withholding from any part of said \$592,465.82 is beyond the jurisdiction of this Court and will be tantamount to making new rate schedules for Memphis, as the order of the Commission directed Interstate to reduce rates to its customers, namely, the Memphis Natural Gas Company and the other pipe line customers here involved. This Court has no original rate-making jurisdiction and is without lawful authority to divert from Memphis any part of the impounded funds representing moneys paid Interstate by United for the account of Memphis or paid Interstate direct by Memphis. If any part of said amounts is diverted from Memphis Natural Gas Company, an order so directing, will result in Memphis paying for the gas in question a higher rate therefor than ordered by the Commission. "Rate-making is a legislative function that the courts will not interfere with, at least until the Commission has exercised the function." *Mississippi Power & Light Co. v. Memphis Natural Gas Company*, 162 F. 2d 388 (5 C). "Rate-making is no function of the courts and should not be attempted either directly or indirectly." *Newton v. Consolidated Gas Co.*, 258 U. S. 165.

WHEREFORE, THE MEMPHIS NATURAL GAS COMPANY PRAYS:

74 1. That it be permitted to intervene in this proceeding and participate fully and in detail in all matters relating to the motion filed by Interstate for an order for distribution of funds.

2. That the stay order entered by this Court on June 14, 1943 be modified by eliminating therefrom all recitals that anyone other than the Memphis Natural Gas Company has an interest in the part of the impounded funds described herein, and that said stay order be specifically amended by eliminating all reference to ultimate consumers or customers of the Memphis Natural Gas Company as parties having an interest in the part of the impounded funds described herein, as the same belongs solely to the Memphis Natural Gas Company, and it is entitled in this Court to an order so deciding. Central States Electric Company v. City of Muscatine, 324 U. S. 138.

3. That an order be entered directing the Clerk to pay to Memphis Natural Gas Company the sum of \$559,594.38 from the impounded funds and directing Interstate Natural Gas Company, Inc., to pay direct to Memphis Natural Gas Company \$32,871.44, the additional amount due but not paid into Court.

4. That the Court grant such other and different relief in the premises as may seem just and proper.

At Memphis, Tennessee, this 23rd day of January, 1948.

Respectfully submitted,

MEMPHIS NATURAL GAS COMPANY

By: H. L. MANN,

*President.*

EDWARD P. RUSSELL,

29th Floor, Sterick Building,

Memphis, Tennessee,

ALDEN T. SHOTWELL,

Ouachita National Bank,

Monroe, Louisiana,

*Attorneys for  
Memphis Natural Gas Company.*

CANADA, RUSSELL & TURNER,

29th Floor, Sterick Building,

Memphis, Tennessee,

*Of Counsel.*

75 *Duly sworn to by H. L. Mann jurat omitted in printing.*

76 *Affidavit of Service.*

STATE OF TENNESSEE

County of Shelby

Before me, a Notary Public in and for said State and County, personally appeared EDWARD P. RUSSELL, attorney for Memphis

Natural Gas Company, who upon being duly sworn did depose and swear that he has caused service of the foregoing petition to be made upon each of the persons whose names appear below by causing the same to be deposited properly addressed thereto with postage prepaid in a United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

United Gas Pipe Line Company,  
(For the Account of Memphis Natural Gas Company)  
Shreveport 92, Louisiana

Memphis Natural Gas Company  
Memphis, Tennessee

Southern Natural Gas Company  
Watts Building  
Birmingham, Alabama

Interstate Natural Gas Company  
405 Ouachita National Bank Bldg.  
Monroe, Louisiana

Mr. Leon M. Fuquay, Secretary  
Federal Power Commission  
Washington 22, D. C.

Mr. Charles E. McGee  
Assistant General Counsel for Federal Power Commission,  
Respondent  
1800 Pennsylvania Avenue, N. W.  
Washington, D. C.

Mr. Edward Rightor  
Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, Louisiana

Mr. Warren O. Coleman  
Attorney for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, Louisiana

Mr. Francis P. Burns  
Attorney for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, Louisiana

Mr. W. C. Perrault

Attorney for Louisiana Public Service Commission

Box 4005

State Capitol

Baton Rouge, Louisiana

Mr. Roland Kizer

Attorney for the City of Baton Rouge, Louisiana

709 Louisiana National Bank Building

Baton Rouge, Louisiana

Mr. William A. Dougherty

Attorney for Interstate Natural Gas Company, Inc. and  
Mississippi River Fuel Corporation

30 Rockefeller Plaza

New York 20, New York

Mr. James Lawrence White

Attorney for Interstate Natural Gas Company, Inc. and  
Mississippi River Fuel Corporation

30 Rockefeller Plaza

New York 20, New York

77 Mr. Henry P. Dart, Jr.

Attorney for Interstate Natural Gas Company, Inc.  
1008 Canal Building  
New Orleans, Louisiana

Mr. Henry Grady Price

Attorney for Interstate Natural Gas Company, Inc.  
1008 Canal Building  
New Orleans, Louisiana

EDWARD P. RUSSELL.

Subscribed and sworn to before me this 23rd day of January, 1948.

M. K. MARCHILDON,  
Notary Public.

(SEAL) My commission expires: June 29, 1948.

78 In the United States Circuit Court of Appeals for the  
Fifth Circuit

*Motion of Southern Natural Gas Company for Leave to Intervene.*  
—Filed January 28, 1948.

To THE HONORABLE, THE JUDGES OF SAID COURT:

Comes now Southern Natural Gas Company, a corporation of the State of Delaware, being the corporation of that name referred to in the petition of Interstate Natural Gas Company, Incorporated, filed herein and verified under date December 16, 1947, and moves that the Court enter an order allowing the said Southern Natural Gas Company to intervene herein and to that end to file its petition for intervention in the form hereto attached.

Respectfully submitted,

SOUTHERN NATURAL GAS COMPANY

By H. D. McHENRY,  
*Vice President.*

FORNEY JOHNSTON,  
First National Building,  
Birmingham 3, Alabama  
*Of Counsel*

To ALL PARTIES:

Please take notice that the above and foregoing motion will be presented to the Court on the 28th day of January, 1948 in New Orleans, Louisiana at 10 o'clock A. M., or as soon thereafter as the motion may be heard.

FORNEY JOHNSTON,  
*Of Counsel for Southern  
Natural Gas Company.*

79 In the United States Circuit Court of Appeals for the  
Fifth Circuit

*Claim and Petition for Intervention of Southern Natural Gas  
Company.—Filed January 28, 1948.*

To THE HONORABLE, THE JUDGES OF SAID COURT:

Comes now Southern Natural Gas Company, herein called "Southern", and files its petition for intervention and verified

claim against Interstate Natural Gas Company, Incorporated, Petitioner in this cause, herein called "Interstate", in the principal amount of \$688,156.71.

1. Southern, a corporation of the State of Delaware, is a natural gas company, as defined in Sec. 2 (6) of the Natural Gas Act (52 Stat. 833, 15 U. S. C. Sec. 717 et seq.), its status as such having been determined by the Federal Power Commission (3 FPC 822). Southern sells natural gas owned and transported by it to certain selected distributors which in turn distribute such gas to consumers with whom Southern has no relation of privity. Southern also sells such natural gas to certain selected industrial users, pursuant to valid private contract with each. Southern has not assumed utility status nor been held to be a public utility or common carrier under the laws of any state. Its deliveries in interstate commerce to distributors since April 27, 1943, the date of the order hereinafter mentioned, have been at rates directed or approved by the Federal Power Commission, as hereinafter stated.\* Its direct deliveries to consumers, whether interstate or intrastate, have not at any time been subject to the jurisdiction or control of that Commission and have been made under said private contracts and at rates fixed by such contracts over which no public or regulatory authority has claimed or asserted jurisdiction in so far as Southern is concerned. Southern is advised by counsel, informed and believes, and on such advice, information and belief avers that no public or regulatory authority has in fact, up to this time, had jurisdiction or authority to revise such private contract rates either prospectively or retroactively or otherwise to require refunds thereof to be made by Southern to any person.

2. On April 27, 1943 the Federal Power Commission entered an Order, modified May 11, 1943 and June 9, 1943, in Dockets G-149 and 132 directing Interstate to decrease its rates and charges for sales of natural gas sold to Southern and others for resale to reflect a reduction in rates which, applied to the 1941 volume of sales, would amount to not less than \$1,100,345 annually. In its opinion No. 91 accompanying said Order, the Commission made a finding to the effect that the portion of said reduction applicable to sales by Interstate to Southern for the period computed was \$146,803.

3. Interstate made certain parts of said Order the subject of review proceedings before this Court in the above styled cause and before the Supreme Court of the United States, with the result that said Order has been held finally effective pursuant to mandate dated or received herein on, to-wit, October 21, 1947.

\* Or otherwise lawfully filed and effective under the Natural Gas Act.

Pending such review proceedings, Interstate continued to charge its customers, including Southern, at the rates in effect prior to the Commission's Order, although, pursuant to the Order of this Court entered June 14, 1943, Interstate has paid into the registry of this Court certain amounts constituting a part of the difference between payments made by Southern to Interstate according to the rates previously existing and the lawful rates determined by said Order of the Commission.

Southern has paid to Interstate a total amount of \$688,156.71 in respect of the period June 1, 1943 to September 30, 1947, in excess of the amount payable according to the rates determined by said order of the Federal Power Commission to be the just, reasonable and applicable rates. Southern and Interstate are in agreement as to the amount of the excess paid by Southern to Interstate over the lawful, applicable rates, viz: the sum of \$688,156.71.

4. In full compliance with the provisions of the Natural Gas Act and the Rules of Federal Power Commission thereunder, Southern has filed with that Commission its rates and charges for natural gas transported and sold by Southern in interstate commerce and subject to the jurisdiction of the Federal Power Commission. No proceedings have been instituted suspending or with reference to any such rate except a proceeding (Docket G-479) in which an Order of the Federal Power Commission was entered March 30, 1946. The Order in Docket G-479 directed Southern to file new rate schedules reducing its rates for gas sold for resale. In pursuance of said Order Southern filed and has since applied in all its sales subject to the jurisdiction of Federal Power Commission, that is, sales to distributors, the new rate schedules which became and have remained effective in accordance with the Commission's Order entered July 19, 1946.

51. Since the making of said Order as to Southern on July 19, 1946, Southern has applied and collected the rates filed and sanctioned pursuant to that Order and neither the Federal Power Commission nor any State, municipality, State Commission or gas distributing company authorized by the Natural Gas Act has instituted any proceeding either by application for rehearing or review (Section 19) or by original proceeding (Section 5) to challenge or revise the rates made effective by and pursuant to said Order of July 19, 1946.

5. Under these facts Southern, in its own right, became vested with and now is entitled to the right to final settlement with Interstate for gas purchased from Interstate for the period elapsing since said order in Dockets G-149 and 132 for a sum less by \$688,156.71, principal amount, than Southern has paid to Interstate.

6. Section 19 (e) of the Natural Gas Act conferred or recognized jurisdiction in this Court to stay enforcement of the Commission's order when Interstate instituted review proceedings in this Court, but no provision of said Natural Gas Act or general power of this Court authorized suspension or impairment of Southern's vested right to refund from Interstate, except as might result from a decree herein modifying or setting aside the Order. The Order has been affirmed in all respects.

The Order of June 14, 1943 staying enforcement on the conditions stated was entered ex parte and without notice as to Southern. Southern was not a party to the proceedings before the Commission or on review by this Court and Southern should not, as it is advised, by reason of conditions imposed upon Interstate for the stay be held to have waived or transferred its right to final settlement with Interstate on the basis averred herein, that is, by recovery from Interstate in Southern's own sole right of the sum of \$688,156.71, with interest, from the dates of the respective excess payments.

7. By its petition filed herein, verified under date December 16, 1947, Interstate has requested and consented that distribution of the funds remaining deposited in the registry of this Court as a condition to obtaining stay of the Commission's Order be made to Southern and other named pipe line purchasers from Interstate. Southern is, accordingly, entitled to and is willing to accept in its own right such distribution as payment pro tanto on the amount due it from Interstate provided the amount be paid to Southern without commitment or prejudice.

8. Southern is advised that by reason of the excess amount of \$688,156.71 paid by Southern to Interstate for deliveries during the period June 1, 1943-September 30, 1947, Interstate has paid into the registry of this Court \$575,248.90, leaving an additional principal amount of \$112,907.81 neither deposited nor paid.

WHEREFORE, Southern Natural Gas Company prays

that Southern be granted leave to intervene and that this petition be received as its intervening petition for the relief herein prayed;

that Southern be adjudged entitled to recover from Interstate, for its own sole right and account, the sum of \$688,156.71, with interest, and to receive as credit pro tanto thereon the sum of \$575,248.90 or such other sum as may have been deposited by Interstate in the registry of this Court and be found preferable to excess payments by Southern; or else that said deposited funds be ordered paid to Southern without preju-

dice to its right to recover the balance due by reason of such excess payments and interest;

that this Court grant such other relief as may be appropriate.

**SOUTHERN NATURAL GAS COMPANY**

By **H. D. McHENRY, Vice President**  
**Claimant-Intervening Petitioner.**

**FORNEY JOHNSTON,**

First National Building,

Birmingham 3, Alabama

*Attorney for Intervening Petitioner,*  
*Southern Natural Gas Company.*

*Duly sworn to by H. D. McHenry jurat omitted in printing.*

83

***Affidavit of Service.***

**STATE OF ALABAMA**

Jefferson County.

Before me the undersigned authority in and for said County and State, personally appeared H. D. McHenry, who being by me first duly sworn, deposes and says that he has caused copy of the foregoing motion and petition to be served upon each of the parties and persons mentioned below by causing same to be deposited in the United States mail, duly stamped and addressed as follows:

William A. Dougherty,  
 30 Rockefeller Plaza,  
 New York 20, New York

and

Henry P. Dart, Jr.,  
 Henry Grady Prie,   
 1008 Canal Building,  
 New Orleans, Louisiana

Of Counsel for Interstate Natural Gas Company, Incorporated.

United Gas Pipe Line Company

(For the Account of Memphis Natural Gas Company)

Shreveport 92, Louisiana

Mississippi River Fuel Corporation

407 North Eighth Street

St. Louis 1, Missouri

Leon M. Fuquay, Secretary  
 Federal Power Commission  
 Washington 22, D. C.

Charles E. McGee, Esq.  
 Assistant General Counsel for Federal Power Commission,  
 Respondent  
 1800 Pennsylvania Avenue, N. W.  
 Washington, D. C.

Edward Rightor, Esq.  
 Counsel for the City of New Orleans, Respondent  
 Canal Building,  
 New Orleans 12, Louisiana

Warren O. Coleman, Esq.  
 Attorney for the City of New Orleans, Respondent  
 Whitney Building  
 New Orleans 12, Louisiana.

Francis P. Burns, Esq.  
 Attorney for the City of New Orleans, Respondent  
 American Bank Building  
 New Orleans 12, Louisiana.

84 W. C. Perrault, Esq.  
 Attorney for Louisiana Public Service Commission  
 Box 4005  
 State Capitol  
 Baton Rouge, Louisiana.

Roland Kizer, Esq.  
 Attorney for the City of Baton Rouge, Louisiana  
 709 Louisiana National Bank Building  
 Baton Rouge, Louisiana.

H. D. McHENRY,  
*Vice President, Southern  
 Natural Gas Company.*

Subscribed and sworn to before me, this 27th day of January,  
 1948.

(SEAL) MARGARET SCHNELL,  
*Notary Public.*

85 In the United States Circuit Court of Appeals.

*Response of Federal Power Commission to Petitioner's Motion for Order for Distribution of Funds—Filed January 28, 1948.*

To THE HONORABLE, THE JUDGES, OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Now comes the Respondent, Federal Power Commission, in the above-entitled cause, hereinafter sometimes referred to as the Commission, by and through its attorneys and, by way of response to Petitioner's motion for an order for distribution of funds, respectfully represents:

I

Petitioner during all the times herein mentioned has been and is now a natural-gas company under the Natural Gas Act, engaged in, among other things, the sale of natural gas to Southern Natural Gas Company, Mississippi River Fuel Corporation and United Gas Pipe Line Company, and from December 10, 1945 to Memphis Natural Gas Company.

II

86 Southern Natural Gas Company during all the times herein mentioned has been and is now a natural-gas company under the Natural Gas Act, engaged in, among other things, the sale of natural gas to industrial consumers and to the following distributing companies, to wit: Atlanta Gas Light Company and Georgia Power Company in the State of Georgia; Alabama Gas Company, Alabama Power Company, Birmingham Gas Company, and Municipality of Pell City in the State of Alabama; and Mississippi Gas Company, Mississippi Power & Light Company, and Vicksburg Municipal Gas System in the State of Mississippi.

III

Mississippi River Fuel Corporation during all the times herein mentioned has been and is now a natural-gas company under the Natural Gas Act, engaged in, among other things, the sale of natural gas direct to industrial consumers and to the following distributing companies, to wit: Arkansas Power & Light Company and Arkansas Louisiana Gas Company in the State of Arkansas; Missouri Natural Gas Company, St. Louis County Gas Company and LaClede Gas Light Company in the State of Missouri; and Illinois Power Company and Union Electric Company of Illinois in the State of Illinois.

## IV

Memphis Natural Gas Company during all the times herein mentioned has been and is now a natural-gas company under the Natural Gas Act, engaged in, among other things, the sale of natural gas to industrial consumers and to the following distributing companies; to wit: Memphis Light Gas and Water Division and West Tennessee Gas Company in the State of Tennessee; Arkansas Power & Light Company in the State of Arkansas; and Mississippi Power & Light Company in the State of Mississippi.

## V

United Gas Pipe Line Company during all the times herein mentioned has been and is now a natural-gas company under  
87 the Natural Gas Act and was prior to and from June 15, 1943 to December 10, 1945 engaged in, among other things, the purchase of natural gas from Petitioner for resale to Memphis Natural Gas Company.

## VI

The Commission by its Opinion No. 91 and order entered April 27, 1943, as modified by orders entered May 11, 1943 and June 9, 1943, required Petitioner to file on or before June 15, 1943 new schedules of rates and charges reflecting a reduction as when applied to the volume of gas sold and transported under Federal regulation for 1941 would amount to not less than \$1,091,583 per annum, distributed as follows:

Mississippi River Fuel Corporation	\$301,329
Southern Natural Gas Company	146,803
United Gas Pipe Line Company (for a/c Memphis Natural Gas Company)	148,188
United Gas Pipe Line Company for New Orleans area—Sale and Transportation	495,263

## VII

Pursuant to the order of this Honorable Court entered on June 14, 1943 granting a stay of the Commission's order, as modified, pending review, under terms and conditions as set forth in paragraph 2 of Petitioner's motion for distribution of funds, Petitioner was required to pay into the registry of this Court the monthly difference between payments to Petitioner under existing rates and the rates required by the said order of the Commission from June 15, 1943 through September 1947. Such payments have amounted to \$3,285,097.

## VIII

On June 9, 1944, Petitioner filed with the Commission rate schedules to be effective as to all bills rendered on and after June 15, 1943 for transportation and sale of natural gas for and to United Gas Pipe Line Company insofar as said order applied to the New Orleans area in compliance with the Commission's said rate order entered April 27, 1943, as modified. United Gas Pipe Line Company likewise on June 9, 1944 filed with the Commission rate schedules which effected a passing on of the reduction received from Petitioner to the distributing companies, New Orleans Public Service, Inc. and Louisiana Power and Light Company, in the New Orleans area. The Commission by order entered on June 26, 1944 accepted for filing the said rate schedules. A copy of said order is attached hereto and marked Exhibit A. Thereafter, this Honorable Court, pursuant to a stipulation, on December 5, 1944 entered an order for distribution of \$388,851 from the said funds in the registry of the Court to the ultimate consumers of natural gas in the said New Orleans area and for refund of excess payments of \$79,805 in the said registry to Petitioner, which latter amount was related to sales and transportation to and for United Gas Pipe Line Company in the said New Orleans area.

## IX

Petitioner, under an agreement dated April 16, 1945 which became effective as its rate schedule on December 10, 1945, sold and has continued to sell natural gas to Memphis Natural Gas Company which it had theretofore sold to United Gas Pipe Line Company, and which latter company, in turn, sold to Memphis Natural Gas Company.

## X

On December 10, 1947 Petitioner filed with the Commission supplements to its effective contracts covering the sales of natural gas to Mississippi River Fuel Corporation, Southern Natural Gas Company, and Memphis Natural Gas Company.

There is now on deposit in the registry of this Court the sum of \$2,466,411 for distribution, of which \$1,320,978 is applicable to excess charges to Mississippi River Fuel Corporation; \$581,721 is applicable to excess charges to Southern Natural Gas Company; and \$328,095 is applicable to excess charges to United Gas Pipe Line Company from June 15, 1943 to December 10, 1945; and \$250,

646 is applicable to excess charges to Memphis Natural Gas Company from December 10, 1945 through September 1947.

## XII

It is the position of Respondent, Federal Power Commission, (1) that the primary purpose of Congress in passing the Natural Gas Act was to protect ultimate consumers of gas from excessive prices and that the aforesaid funds paid into the registry of this Court, resulting from the reduced rates ordered by the Commission, belong to and should be distributed to the ultimate consumers of the natural gas from which said funds arose; (2) that notice of Petitioner's motion and opportunity to be heard should be given interested persons, including, among others, the state regulatory commissions and cities in which are located the ultimate consumers, and the customers served for direct consumption by the natural gas companies purchasing gas directly from Petitioner; and (3) that Petitioner should be required to pay all expenses of distribution of said funds.

Respectfully submitted,

BRAFORD ROSS,  
*Counsel for Respondent*  
*Federal Power Commission.*

Dated at Washington, D. C.  
this 26th day of January, 1948.

Address:

Hurley-Wright Building  
1800 Pennsylvania Avenue, N. W.  
Washington 25, D. C.

*Exhibit A.*

United States of America  
Federal Power Commission

Commissioners { Basil Manly, Acting Chairman, Claude L. Draper  
and John W. Scott, Nelson Lee Smith not participating.

June 26, 1944

In the Matters of

INTERSTATE NATURAL GAS COMPANY, INC.

Docket No. G-149

LOUISIANA PUBLIC SERVICE COMMISSION, *Complainant*,

v.

INTERSTATE NATURAL GAS COMPANY, INC.; *Defendant*,

UNITED GAS PIPE LINE COMPANY.

Docket No. G-132.

*Order Allowing Rate Schedule to Take Effect.*

It appearing to the Commission that:

(a) On April 27, 1943, the Commission, *In the Matter of Interstate Natural Gas Company, Inc.* (Interstate), Docket No. G-149, and *Louisiana Public Service Commission, Complainant, v. Interstate Natural Gas Company, Inc.*, Defendant, Docket No. G-132, adopted Opinion No. 91, together with an "Order Reducing Rates," which order was thereafter modified by orders of May 11, 1943, and June 9, 1943. By said order of April 27, 1943, as thus modified, the Commission, under the Natural Gas Act, using 1941 as a test year, required Interstate to reduce its rates by \$1,091,583 per year, including a reduction of \$495,263 in the rates charged for the transportation of natural gas for, and the sale of natural gas to, United Gas Pipe Line Company (United) for resale in the New Orleans area, to be effective on all bills rendered on or after June 15, 1943.

91 (b) Thereafter, on June 14, 1943, Interstate filed a petition in the United States Circuit Court of Appeals for the Fifth Circuit, for review of the Commission's order dated April 27, 1943, and for a stay of said order, as modified by the orders of May 11, 1943, and June 9, 1943. On June 14, 1943, said Court issued an order granting stay of the order of the Commission dated April 27, 1943, as modified, until the further order of said Court, upon the condition, among others, that the monthly difference between payments to Interstate under existing rates or arrangements and those required under the order of the Commission should be promptly paid into the registry of said Court, and that the amounts so deposited should remain on deposit subject to the further order or orders of said Court to be returned to such ultimate consumers of gas, or other persons to whom the Court should find the same should be returned, as contemplated by the provisions of the Natural Gas Act, and upon the further condition that full power and jurisdiction were reserved to cancel or modify its said order and to enter any other orders to protect or to promote the rights and interests of the parties to the litigation and of the ultimate consumers or other parties financially interested in the impounded funds. Said order of the Court granting stay of the Commission's order of April 27, 1943, as modified, is still in force and effect; and pursuant to the provisions of said order of the Court, Interstate has regularly made monthly deposits of funds into the registry of said Court.

(c) On June 9, 1944, Interstate and United respectively filed with the Commission rate schedules, hereinafter more specifically referred to in paragraph (d), supplementing certain of their respective rate schedules on file with the Commission and to be effective as to all bills rendered on or after June 15, 1943. Such rate schedules have been filed by Interstate to comply with the Commission's order of April 27, 1943, as modified, insofar as said order applies to the New Orleans area. Such rate schedules have been filed by United to pass on the reduction received from Interstate to the two distributing companies in the New Orleans area, New Orleans Public Service, Inc., and Louisiana Power and Light Company, in accordance with the Commission's Opinion No. 90 in connection with the investigation of the rates of United in Docket Nos. G-133, G-148, G-157 and G-193.

(d) The rate schedules filed by Interstate are schedules of rates and charges for its transportation of natural gas for, and

sale of natural gas to, United for the New Orleans area, designated as follows:

Cancellation of Interstate Natural Gas Company, Inc.  
Rate Schedule FPC No. 15;

Interstate Natural Gas Company, Inc.  
Supplement No. 8 to Rate Schedule FPC No. 16;

Interstate Natural Gas Company, Inc.  
Supplement No. 9 to Rate Schedule FPC No. 16;

Interstate Natural Gas Company, Inc.  
Supplement No. 5 to Rate Schedule FPC No. 5;

Interstate Natural Gas Company, Inc.  
Supplement No. 4 to Rate Schedule FPC No. 7;

Interstate Natural Gas Company, Inc.  
Supplement No. 4 to Rate Schedule FPC No. 8;

Interstate Natural Gas Company, Inc.  
Supplement No. 5 to Rate Schedule FPC No. 9;

Interstate Natural Gas Company, Inc.  
Supplement No. 4 to Rate Schedule FPC No. 11;

Interstate Natural Gas Company, Inc.  
Supplement No. 4 to Rate Schedule FPC No. 17;

Interstate Natural Gas Company, Inc.  
Supplement No. 4 to Rate Schedule FPC No. 23.

The rate schedules filed by United are schedules of rates and charges for its transactions with Interstate and for its sales to New Orleans Public Service, Inc., and Louisiana Power and Light Company for the New Orleans area, designated as follows:

Cancellation of United Gas Pipe Line Company  
Rate Schedule FPC No. 16;

United Gas Pipe Line Company  
Supplement No. 6 to Rate Schedule FPC No. 17;

United Gas Pipe Line Company  
Supplement No. 7 to Rate Schedule FPC No. 18;

United Gas Pipe Line Company  
Rate Schedule FPC No. 74.

(e) The aforesaid schedules of rates and charges filed on June 9, 1944, by Interstate for the transportation of natural gas

for, and the sale of natural gas to, United for the New Orleans area, when applied to the 1941 volume of sales, result in a reduction of \$541,478 annually, and are therefore in substantial compliance with the Commission's Opinion No. 91 and order of April 27, 1943, as modified by its orders of May 11, 1943, and June 9, 1943 insofar as the orders and opinion apply to the New Orleans area.

- (f) The aforesaid schedules of rates and charges filed on June 9, 1944, by United for sales to New Orleans Public Service, Inc., and Louisiana Power and Light Company (collectively referred to as the New Orleans distributing companies) for the New Orleans area, when applied to 1941 volume of sales result in a reduction of \$544,175 annually.
- (g) In comparison with the test year 1941 used by the Commission and the resultant ordered reduction of \$495,263 applicable to the New Orleans area, the schedules of rates and charges submitted to Interstate and by United when applied to the 1943 volume of sales, result in a reduction of \$674,853 to the New Orleans distributing companies for gas delivered at the city-gate.
- (h) United's Supplement No. 6 to Rate Schedule FPC No. 17, and Supplement No. 7 to Rate Schedule FPC No. 18, consisting of agreements between United and the New Orleans distributing companies, contain written statements from the New Orleans distributing companies that they will put into effect rates to the ultimate consumers which will reflect the reductions in the rates charged by United.
- (i) With respect to the distribution of refunds which have accrued since issuance of the Commission's order of April 27, 1943, the Commissioner of Public Utilities of New Orleans has advised the Commission that "New Orleans Public Service, Inc. has agreed to pass on and I will see that it passes on to its customers the same amount received by it as a result" of the reduction in the city-gate rates and "that same will be made retroactive to June 1943," and the Commission has received a similar assurance from Louisiana Power and Light Company.

93 The Commission finds that:

In view of the foregoing circumstances, including the fact that the ultimate consumers are to receive the full amount of the refunds which have accrued since issuance of the Commission's order of April 27, 1943, it is appropriate to take the action hereinafter provided.

The Commission *orders* that:

- (A) The rate schedules described in paragraph (d) hereof be and the same are hereby accepted for filing in compliance with the Commission's Opinion No. 91 and order of April 27, 1943, as modified by its orders of May 11, 1943, and June 9, 1943, insofar as said opinion and orders apply to the New Orleans area.
- (B) The rate schedules described in paragraph (d) hereof be and the same are hereby allowed to be effective as to all bills rendered on or after June 15, 1943.
- (C) The rate schedules described in paragraph (d) hereof shall be deemed to have been filed and published in compliance with the provisions of the Natural Gas Act, as amended.
- (D) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended.
- (E) This order is without prejudice to any findings or orders which may be made by the Commission in any proceeding now pending or hereafter instituted by or against Interstate Natural Gas Company, Inc., or United Gas Pipe Line Company.

By the Commission.

LEON M. FUQUAY,

*Secretary.*

84. *Duly sworn to by Bradford Ross Jurat omitted in printing.*

95. *Affidavit of Service.*

DISTRICT OF COLUMBIA }  
Washington } ss

Before me, a notary public in and for the District of Columbia, Washington, personally appeared Bradford Ross, who upon being first duly sworn, on oath did depose and say that the duly served copies of the foregoing response upon each of the persons whose names appear below, by depositing the same in the United States Post Office at Washington, D. C., in sealed envelopes properly addressed thereto with postage prepaid, on the 26th day of January, 1948. Service has so been made upon:

William A. Dougherty, Esq.

Counsel for Interstate Natural Gas Company, Incorporated.

30 Rockefeller Plaza

New York 20, New York

United Gas Pipe Line Company  
(For the Account of Memphis Natural Gas Company)  
Shreveport 92, Louisiana

Southern Natural Gas Company  
Watts Building  
Birmingham, Alabama

Mississippi River Fuel Corporation  
407 North Eighth Street  
St. Louis 1, Missouri

Edward Rightor, Esq.  
Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, Louisiana

Warren O. Coleman, Esq.  
Attorney for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, Louisiana

Francis P. Burns, Esq.  
Attorney for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, Louisiana

96 W. C. Perrault, Esq.  
Attorney for Louisiana Public Service Commission  
Box 4005  
State Capitol  
Baton Rouge, Louisiana

Roland Kizer, Esq.  
Attorney for the City of Baton Rouge, Louisiana  
709 Louisiana National Bank Building  
Baton Rouge, Louisiana.

BRADFORD ROSS,

Subscribed and sworn to before me this 26th day of January,  
1948.

(SEAL) BERNICE P. STONE, Notary Public in and for the District  
of Columbia, Washington.

My Commission Expires June 14, 1949.

97 In the United States Circuit Court of Appeals

*Verified Statement of United Gas Pipe Line Company.—Filed  
January 28, 1948.*

Now COMES United Gas Pipe Line Company, hereinafter called "United", and respectfully shows:

1.

That it has no interest in any funds deposited in the registry of the Court in this proceeding except for the account of Memphis Natural Gas Company.

2.

That should the final judgment of this Court direct any payments be made to United in this proceeding, the same would be for the account of Memphis Natural Gas Company, hereinafter called "Memphis", and upon receipt of such funds United would remit the same in full to Memphis.

3.

United shows that in any event, such judgment as may be entered in this proceeding and which may become the final judgment of this Court, should relieve United of any responsibility or liability of any kind or character to any parties whomsoever in connection therewith.

4.

That the correct amount of such funds as should have been deposited in the registry of this Court for United for the account of Memphis should be determined in the judgment of this Court.

WHEREFORE, United prays that this verified statement may be treated as a petition to intervene herein, and that same be allowed, and that it may be relieved from any responsibility or liability in connection with this matter in accordance with the foregoing and for all orders necessary and for full, general and equitable relief in the premises and for cost.

HUFFMAN LEWIS,

*Counsel for*

*United Gas Pipe Line Company.*

C. HUFFMAN LEWIS  
1525 Slattery Building  
Shreveport, Louisiana

Of Counsel:  
WILKINSON, LEWIS & WILKINSON  
Shreveport, Louisiana

99. *Duly sworn to by M. A. Abernathy jurat omitted in printing.*

PARISH OF CADDO }  
STATE OF LOUISIANA }

Before me, a Notary Public in and for said State and Parish, personally appeared C. HUFFMAN LEWIS, attorney for United Gas Pipe Line Company, who upon being duly sworn did depose and swear that he has caused service of the foregoing verified statement to be made upon each of the persons whose names appear below by causing a copy of same to be deposited properly addressed thereto with postage prepaid in a United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

Memphis Natural Gas Company  
Memphis, Tennessee

Southern Natural Gas Company  
Watts Building  
Birmingham, Alabama

Interstate Natural Gas Company  
405 Ouachita National Bank Bldg.  
Monroe, Louisiana

Mr. Leon M. Fuquay, Secretary  
Federal Power Commission  
Washington 22, D. C.

Mr. Charles E. McGee  
Assistant General Counsel for Federal Power Commission,  
Respondent  
1800 Pennsylvania Avenue, N. W.  
Washington, D. C.

Mr. Edward Rightor  
Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, Louisiana

Mr. Warren O. Coleman  
Attorney for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, Louisiana

Mr. Francis P. Burns  
Attorney for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, Louisiana

Mr. W. C. Perrault  
 Attorney for Louisiana Public Service Commission  
 Box 4005  
 State Capitol  
 Baton Rouge, Louisiana

Mr. Roland Kizer  
 Attorney for the City of Baton Rouge, Louisiana  
 709 Louisiana National Bank Building  
 Baton Rouge, Louisiana

Mr. William A. Dougherty  
 Attorney for Interstate Natural Gas Company, Inc. and  
 Mississippi River Fuel Corporation  
 30 Rockefeller Plaza  
 New York 20, New York

Mr. James Lawrence White  
 Attorney for Interstate Natural Gas Company, Inc. and  
 Mississippi River Fuel Corporation  
 30 Rockefeller Plaza  
 New York 20, New York

101 Mr. Henry P. Dart, Jr.  
 Attorney for Interstate Natural Gas Company, Inc.  
 1008 Canal Building  
 New Orleans, Louisiana

Mr. Henry Grady Price  
 Attorney for Interstate Natural Gas Company, Inc.  
 1008 Canal Building  
 New Orleans, Louisiana

C. HUFFMAN LEWIS

SUBSCRIBED AND SWORN To before me this 26th day of January,  
 1948.

EDITH L. EMMER  
*Notary Public*

(Seal)

102 In United States Circuit Court of Appeals

*Order Allowing Filing of Petitions of Intervention—*  
*January 28th, 1948.*

IT IS ORDERED by the Court that all parties desiring to file petitions of Intervention in connection with the Motion for the Distribution of funds on deposit in the Registry of this Court in the above entitled and numbered cause be, and they are hereby, granted leave to file such Petitions of Intervention.

103

In the  
United States Circuit Court of Appeals*Petition of Intervention by Illinois Commerce Commission*  
*Filed Feb. 6, 1948*

Now comes the Illinois Commerce Commission, an administrative agency of the State of Illinois, charged by the laws of that State with the duties, among others, of general regulation of public utilities, including those furnishing natural gas therein, and, pursuant to the order or rule of the Court, made and announced at the hearing in this case held in New Orleans on January 28, 1948, permitting such intervention, files this its Petition of Intervention in this proceeding.

Your Intervenor, hereinafter for convenience referred to as the Illinois Commission, respectfully represents that its interest in this proceeding arises from the fact that a portion of the funds now in the custody of the Court was contributed originally by consumers of gas public utility service in the State of Illinois and paid, in the form of rates for such service, to two local Illinois public utility companies, namely, Illinois Power Company and Union Electric Power Company, of Illinois; that natural gas so consumed and paid for by said Illinois consumers was gas furnished by the Interstate Natural Gas Company, Incorporated, petitioner herein; that the said gas was furnished through the facilities of the Mississippi River Fuel Corporation, which last mentioned Corporation acted as an intermediary in purchasing said gas from petitioner and re-selling it to the aforesaid two Illinois public utility companies.

The Illinois Commission will contend (as so it understands, con- actions were in the nature of the furnishing of a public utility service, as distinct from the private purchase and sale of gas, and that all were made under the lawful regulation of either the Federal Power Commission or the Illinois Commerce Commission.

The Illinois Commission further states that said funds now in the custody of the court were accumulated in aid of the exercise by the Federal Power Commission of its powers, granted under the Natural Gas Act, to regulate rates of natural gas companies (as defined in said Act) and that such powers were granted by Congress, and could only have been granted constitutionally for the protection of the public.

The Illinois Commission will contend (as so it understands, contends also the Federal Power Commission, the Public Service Commission of Missouri and other public authorities here involved), that the said funds in the custody of the court should be 105 distributed to the consumers of gas, from whom such funds

were ultimately collected, and should not be paid to the immediate takers of gas from the petitioner, who acted but as intermediaries in the entire transaction of furnishing natural gas to the public.

To do otherwise, the Illinois Commission will contend, would be neither equitable, nor in keeping with the intent, purpose and spirit of the Natural Gas Act, nor with precedent, but would, on the contrary, divert the effect of the regulatory acts of the Federal Power Commission from the protection of the public interest to the unjust enrichment of those who stand as intermediaries between the Interstate Natural Gas Corporation, Incorporated, supplier, and the general public, ultimate users, of the aforesaid gas.

The Illinois Commission further states that the general public to whom said gas is supplied in this state includes numerous householders, small users, and others who, in the nature of things, cannot reasonably be represented in this cause by private counsel, and that, because of the public utility nature of the service involved, this Commission has a proper interest in this cause.

The Illinois Commission shows that it has served this petition of intervention upon all parties known by it to be affected thereby, as shown by the certificate of service attached hereto.

WHEREFORE THE ILLINOIS COMMISSION PRAYS:

That this petition of intervention be filed, pursuant to the aforesaid order of the court announced on January 28, 1948, and that the Illinois Commerce Commission become an intervenor in this cause.

That it be adjudged that the funds in the custody of the Court belong to and should be distributed equitably among the ultimate consumers of the gas with respect to which the said funds were accumulated.

That the court enter upon further hearings with respect to a plan or plans to accomplish such equitable distribution, and, with respect to such plan for distribution in the State of Illinois, the Illinois Commission states that its technical staff has had experience in developing such plans for distribution of other impounded funds of similar nature, including those relating to the Natural Gas Pipe Line Company of America, the Colorado Interstate Gas Company and the Panhandle Eastern Pipe Line Company, and respectfully offers to the Court such technical assistance of its staff as the Court may see fit to accept.

That the Court grant such further, other and general relief as may appear appropriate in equity or under all the facts and the law.

ILLINOIS COMMERCE COMMISSION

By JOHN D. BIGGS,  
Chairman.

107 *Duly sworn to by John D. Biggs  
jurat omitted in printing.*

108 *Certificate of Service.*

I HEREBY CERTIFY that I have this day served a copy of the attached "Petition of Intervention by Illinois Commerce Commission" on the following named parties of record in this proceeding, by mailing a copy thereof, postage prepaid to the addresses shown on the list below.

February 3, 1948.

By NORMAN J. SCHUTZ,

*For the Illinois Commerce Commission.*

Federal Power Commission  
Bradford Ross, General Counsel  
1800 Penn. Ave.  
Washington 25, D. C.

Public Service Commission of Missouri  
Hon. Archie McDufie, Secretary  
Jackson, Miss.

Public Service Commission of Missouri  
Hon. Fred H. Carr  
Jefferson City, Mo.

Public Service Commission of Louisiana  
Hon. P. K. Frye, Secretary  
Baton Rouge, La.

Public Service Commission of Arkansas  
Hon. M. H. Mehaffy, Secretary  
Little Rock, Ark.

Henry P. Dart, Jr.  
1008 Canal Bldg.  
New Orleans 12, La.

Alden T. Shotwell  
Ouachita Nat'l Bk. Bldg.  
Monroe, La.

William A. Dougherty  
30 Rockefeller Plaza  
New York, N. Y.

Roland C. Kizer  
709-10 La. Nat'l Bk. Bldg.  
Baton Rouge, La.

109

Chas. C. Crabtree  
507 V & P Bldg.  
Memphis, Tenn.

C. Huffman Lewis  
1525 Slattery Bldg.  
Shreveport, La.

Forney Johnston  
First National Bk. Bldg.  
Birmingham, Ala.

Memphis Natural Gas Company  
Sterick Bldg.  
Memphis, Tenn.

Missouri River Fuel Corp.  
William G. Marbury, Vice President  
407 North 8th St.  
St. Louis 1, Mo.

W. C. Perrault, Esq.  
First Ass't. Atty. General of Louisiana  
4005 State Capitol Bldg  
Baton Rouge, La.

Illinois Power Company  
Allen VanWyk, President  
Decatur, Ill.

Union Electric Power Company  
H. C. Scott, Manager  
E. St. Louis, Ill.

110

In the  
United States Circuit Court of Appeals

*Intervening Petition and Claim of Mississippi River Fuel Corporation—Filed Feb. 9, 1948*

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

COMES now Mississippi River Fuel Corporation, a Delaware corporation and a natural-gas company under the Federal Natural Gas Act (15 U. S. C. 717 et seq.), herein called "Mississippi Corporation," and, pursuant to the order of this court entered on January 28, 1948, permitting interested parties to intervene in this proceeding, files this intervening petition and claim against

Interstate Natural Gas Company, Incorporated, herein called "Interstate," petitioner in this cause, in the amount of \$1,484,582.53 representing excess charges for natural gas purchased from Interstate by Mississippi Corporation as hereinafter set forth.

1. On April 27, 1943, the Federal Power Commission entered an order providing for a reduction in rates, inter alia, to Mississippi Corporation, modified by orders entered by said Commission on May 11, 1943, and June 9, 1943, in causes G-132 and G-149 wherein the Commission found that the prices being paid for natural gas sold, inter alia, to Mississippi Corporation, were unjust and unreasonable and after supplemental order Interstate was ordered to file new schedules effective June 15, 1943.

111 2. Pursuant to an order entered by your Honorable Court on June 14, 1943, a Stay of said Federal Power Commission order was granted upon the conditions set forth therein and as recited in Interstate's "MOTION FOR AN ORDER FOR DISTRIBUTION OF EXNS" filed with your Honorable Court, December 22, 1947. Under the protection of said stay order Interstate continued to collect from Mississippi Corporation for natural gas delivered to it, the rates provided for in the contract entered into between Interstate and Mississippi Corporation under date of August 1, 1929, filed as a rate schedule with the Federal Power Commission as F. P. C. No. 4, as modified by certain schedules filed as supplements thereto. Said stay order was entered without notice to Mississippi Corporation and without any opportunity for Mississippi Corporation to participate in the determination of the terms and provisions of said stay order.

3. The subsequent appeal and disposition of the rate order by your Honorable Court and by the Supreme Court of the United States resulted in an affirmance of the said order of the Federal Power Commission and the vesting in Mississippi Corporation of its claim to the amounts of money paid into the registry of the court on account of the excess over the Federal Power Commission fixed rate collected from it.

4. During the pendency of the court proceedings to review the rate reduction order of the Federal Power Commission, Mississippi Corporation paid to Interstate in excess of the rates fixed by said Commission for gas delivered to Mississippi Corporation for the period ending with September 1947, the amount of \$1,484,582.53 which is computed on the basis of the rate schedule (Supplement No. 8 to F. P. C. No. 4) recently filed by Interstate. The reduced rate stated therein has been paid to Interstate for all gas delivered during October 1947 and subsequent months. Mississippi Corporation hereby makes claim to the amount of \$1,484,582.53, which amount is agreed to between Interstate and Mississippi Corporation. Interstate has advised Mississippi Corporation

that there has been deposited in the registry of this court on account of gas delivered to Mississippi Corporation only the sum of \$15309,729.72 and there is owing to Mississippi Corporation the amount of \$174,852.81 in addition to the funds imposed to its account.

5. By order of the Federal Power Commission entered April 6, 1943, in Docket No. 7G-462, a rate investigation was instituted against Mississippi Corporation for the purpose of determining the reasonableness of rates and charges subject to the jurisdiction of the Commission. The Commission entered a rate reduction order in said proceeding on November 9, 1945, as supplemented November 30, 1945 (F. P. C. Opinion No. 126, 4 F. P. C. 340), fixing and determining the rates subject to the jurisdiction of the Commission thereafter to be charged by Mississippi Corporation. A copy of the order reducing rates is attached hereto as "Exhibit A."

6. Thereafter, Mississippi Corporation filed a review proceeding to said order in the Court of Appeals for the District of Columbia, which Court on May 28, 1947, rendered its opinion reversing in part the order of the Commission and remanding the case for further proceedings. Application for rehearing was filed by the Federal Power Commission and denied by order entered July 28, 1947 (Mississippi River Fuel Corporation v. Federal Power Commission, 163 F. 2d. 433). No petition for certiorari was filed by the Federal Power Commission to the judgment of reversal, and the matter is now pending before the Federal Power Commission for the entry of further orders therein.

7. In the Commission's order of November 9, 1945, paragraph E, Mississippi Corporation was directed to pass on the proper portion of the reduction made in the rates of Interstate when said Interstate reduction was finally validated by the courts. Mississippi Corporation urged the invalidity of that portion of the order, as well as other portions thereof, and the Court's Opinion commented upon that contention as follows:

113 "Petitioner urges the invalidity of that part of the order of the Commission which directs it to make effective in total amount whatever reduction of its costs of gas, purchased from The Interstate Natural Gas Company is finally approved by the courts upon review of the Commission's order in that case. We need not pass upon that point, as the Supreme Court has granted certiorari and heard argument in the *Interstate* case, and the rates of that company will shortly be fixed. Since the present case is remanded, that reduction, if any be proper, can be effectuated in such manner and amount as proves proper upon the reconsideration."

8. From the foregoing it is clear that consideration of the rates which Mississippi Corporation may charge distributing company

customers for gas sold to them for resale is now pending before the Federal Power Commission, which has jurisdiction over Mississippi Corporation and is the only authority under the Natural Gas Act having initial rate-fixing power over such sales by Mississippi Corporation. Accordingly, the rates of Mississippi Corporation are already involved in the proceeding referred to, have not finally been determined, and this court has no jurisdiction to enter any order affecting such rates. The Commission has no reparation powers (Federal Power Commission v. Hope Natural Gas Company, 320 U. S. 591, 618); nor has this court, but to order payment of Mississippi Corporation's share to any others would be tantamount to a reparations award.

9. Moreover, in the Opinion accompanying the above Commission order, the Commission recognized a right in Mississippi Corporation to the Interstate difference in rates when it stated:

"The cost of gas purchased by Mississippi from its affiliate, Interstate Natural Gas Company, will decrease in the event the reviewing Court upholds this Commission's 1943 order reducing the rate by \$301,329. The prescribed rate has been stayed pending Court review and the excess revenues over the ordered rate are being impounded. Mississippi will receive an unearned windfall when the rate is declared valid by the Court and refunds ordered. Under the authority to fix rates for the future, however, the Commission will direct Mississippi to pass on the proper portion of that reduction to the customers purchasing gas for resale. This cost of gas purchased by Mississippi is a 'commodity' charge, and when final judicial review validates the reduction, Mississippi should reduce its rates to the seven utility customers by the proportion of the volumes of gas it sells to these utilities to the total volume of gas sales in the year of the final judicial decision." (F. P. C. Opinion No. 126, In re: Mississippi River Fuel Corporation, et al., Docket G-462, 4 E. P. C. 340 at 359.)

114- 10. In addition to sales made to utility distributing companies for resale which are subject to the jurisdiction of the Federal Power Commission, Mississippi Corporation makes sales of natural gas direct to industrial customers for consumption by the purchaser. These sales are made under contracts privately negotiated for specific periods of time and are excluded from the jurisdiction of the Federal Power Commission. There has been instituted by the Public Service Commission of Missouri proceedings to determine if such sales made by Mississippi Corporation in Missouri are subject to State regulation (In the Matter of Jurisdiction to Regulate Direct Sales of Natural Gas for Industrial Purposes by Mississippi River Fuel Corporation, No. 11255). Mississippi Cor-

poration is contesting the authority of said State Commission under the laws of Missouri, over such industrial sales. Under date of January 21, 1948, the Illinois Commerce Commission notified Mississippi Corporation that it should proceed without delay to take appropriate steps to comply with the requirements of the Illinois statutes regulating public utilities. Mississippi Corporation has advised the Illinois Commerce Commission that it believes it is not within the definition of a public utility under the Illinois statutes. By reason of a recent decision of the Supreme Court of the United States (Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana, et al., No. 69 October Term 1947, 16 U. S. Law Week 4051), such sales of natural gas to industrial consumers, even though made in interstate commerce, are held not to be free from State regulation by reason of any provision of the Federal Constitution. Mississippi Corporation at no time has conducted its business as a public utility and has maintained at all times that such sales are free from regulatory control of any governmental authority. The prices charged for such sales, in any event, are not within the jurisdiction of this court.

WHEREFORE Mississippi Corporation prays that it be permitted to intervene as above set forth, and, further, claims of Interstate, and to the extent to which payment was made into the registry of your Honorable Court of said following amount, the sum of \$1,484,582.53 by reason of the terms of the reduced rates ordered by the Federal Power Commission in its orders above recited and prays hereby for an order from your court for immediate payment of said claimant of the sum of \$1,309,729.72 already paid into the registry of the court plus an order upon Interstate Natural Gas Company, petitioner above named, requiring it to pay to claimant an additional amount of \$174,852.81 in lieu of deposit into the registry of this court.

Respectfully submitted,

MISSISSIPPI RIVER FUEL CORPORATION.

By /s/ WILLIAM G. MARBURY,  
Vice President.

WILLIAM A. DOUGHERTY,  
(s) JAMES LAWRENCE WHITE,  
JAMES L. WHITE,

30 Rockefeller Plaza

New York 20, New York

Attorneys for Mississippi River Fuel Corporation.

United States of America  
Federal Power Commission

Before Leland Olds, Acting Chairman; Claude L. Draper, Richard Sachse, Nelson Lee Smith and Harrington Wimberly, Commissioners.

## In the Matter of

MISSISSIPPI RIVER FUEL CORPORATION, ET AL.

DOCKET NO. G-462

November 9, 1945

~~Order Reducing Rates~~

Upon consideration of the orders previously entered in these proceedings, the evidence of record, the briefs and oral arguments, and the Commission having on this date issued its Opinion No. 126, which is incorporated by reference and made a part of this order; The Commission finds that:

- (1) Mississippi River Fuel Corporation is a corporation organized and existing under the laws of the State of Delaware;
- (2) Mississippi owns and operates an integrated natural gas pipeline system extending from Perryville, Louisiana, through the States of Arkansas and Missouri to Alton, Illinois;
- (3) Mississippi purchases natural gas in Louisiana and transports it by means of its pipeline to points in Arkansas, Missouri, and Illinois at which it sells that natural gas to industrial ultimate consumers and to seven gas companies for resale for ultimate public consumption outside Louisiana;
- (4) The transportation and sale by Mississippi of natural gas to Arkansas Louisiana Gas Company, Arkansas Power & Light Company, Missouri Natural Gas Company, Laeide Gas Light Company, St. Louis County Gas Company, Union Electric Company of Illinois and Illinois Iowa Power Company constitute, in each instance, the transportation and sale of natural gas in interstate commerce for resale within the purview of the Natural Gas Act, and the rates charged by Mississippi for such natural gas are subject to the jurisdiction of the Federal Power Commission;
- (5) The operations and actual costs, as adjusted, for the year 1943 provide the best basis for comparing the revenues and expenses related to the volume of gas sales and investment in plant capacity for the purpose of determining the reasonable earnings and rates for the future;

(6) The actual legitimate cost of Mississippi's gas plant which is used and useful in rendering gas service, was \$23,246,126 as of December 31, 1943;

(7) The depreciation accrued in this gas plant was \$9,812,661 as of December 31, 1943, and that amount will be deducted from the actual legitimate cost in arriving at the rate base;

(8) Contributions in aid of construction were \$150,846 and do not represent investment by Mississippi, so that amount will be deducted in ascertaining the rate base;

(9) The reasonable allowance for working capital to be included in the rate base is \$430,000.

(10) The rate base, as of December 31, 1943, totals \$13,712,619, composed as follows:

Actual Legitimate Cost of Gas Plant.....	\$23,246,126
Deduct:	
Accrued Depreciation .....	9,812,661
Contributions in Aid of Construction.....	150,846
Net Investment.....	\$33,282,619
Add:	
Working Capital .....	430,000
	\$13,712,619

(11) In 1943 Mississippi's gas sales to utilities were 13,695,401 Mcf and to industrial customers were 29,339,973 Mcf; and related revenues were \$3,497,918 from utilities and \$5,745,218 from industrials aggregating \$9,243,136.

(12) The proper 1943 operating expenses for rate-making, before allocation are:

Gas Purchased .....	\$3,220,024
Operation, Maintenance and General Expenses .....	1,633,982
Depreciation .....	803,200
Taxes Other Than Federal Income.....	317,460
Federal Income Tax.....	334,309
Total.....	\$6,308,975

(13) Six percent is a fair rate of return for Mississippi.

(14) It is necessary to allocate the cost of service, including return of \$822,757, to the various classes of customers in order to segregate Mississippi's regulated and unregulated business.

(15) Recognizing both "commodity" and "demand" elements, the cost of service, aggregating \$7,131,732, should be allocated

\$4,579,427 to the unregulated business and \$2,552,305 to regulated business;

(16) Mississippi's revenues from sales to utilities for resale during the test year (1943) exceeded the cost of rendering that service, including return, by \$945,613; and the rates charged and received by Mississippi for the transportation and sale of natural gas in interstate commerce for resale are unjust and unreasonable to that extent with relation to the volumes of gas sold for resale in 1943;

(17) For the future, uniform demand and commodity rates for firm regulated sales are appropriate in this case; a commodity rate of 13¢ per Mcf of firm gas sales to the utility customers for resale is reasonable; \$764,269 is a reasonable amount for Mississippi to collect from firm utility customers in the form of a demand charge based upon the billing demand data for the year 1943; and 14¢ per Mcf for interruptible gas sales to utilities for resale is a reasonable rate;

(18) The rates and charges found to be reasonable in paragraph (17) will compensate Mississippi, through revenues from the regulated sales, in an amount sufficient to cover all operating expenses, and a fair return on the rate base associated with such business.

120. Therefore, the Commission *orders* that:

(A) The rates charged and received for the transportation and sale of natural gas by Mississippi River Fuel Corporation in interstate commerce to the utility customers for resale for ultimate public consumption will be decreased to reflect a reduction, on an annual basis, of not less than \$945,613 in the operating revenues of the company with relation to the volume of gas sold for resale in 1943;

(B) Mississippi shall file, within thirty (30) days of the date of this order, new schedules of rates and charges for the transportation and sale of natural gas in interstate commerce to its customer companies for resale, which shall reflect not less than the reduction ordered in paragraph (A), and shall be in accord with the provisions in paragraph (17);

(C) The new schedules of rates and charges ordered in paragraph (B) when submitted in the form satisfactory to the Commission shall become effective as to all bills based on meter readings made after sixty-five (65) days from the date of this order;

(D) The unit of measurement for natural gas sold under the new rates in interstate commerce to utilities for resale shall be one thousand (1,000) cubic feet of natural gas at a base temperature of sixty (60) degrees Fahrenheit; and at a base pressure of eight (8) ounce gauge pressure above fourteen and four-tenths (14.4) pounds absolute atmospheric pressure, and the readings and registration of the metering equipment shall be computed into such units; and

regardless of delivery points the absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch;

(E) When this Commission's order of April 27, 1943 (FPC Docket Nos. G-149 and G-132) directing Interstate Natural Gas Company to reduce rates \$301,329 to Mississippi is validated by the courts, Mississippi shall pass on the proper portion of that reduction by reducing its rates to the utility customers by the proportion of the volumes of gas it sells to these utilities to the total volume of gas sales in the year of the final judicial decision;

121 (F) Commencing with the year 1946, Mississippi shall submit reports promptly, as of June 30 and December 31 of each year until further notice, showing volume of gas sales by customers and classes and the related revenues; the revenues from gas sales to utilities for resale shall be tabulated by the old rates and the prescribed new rates.

By the Commission.

LEON M. FUQUAY,  
*Secretary.*

122 *Affidavit of Service*

STATE OF NEW YORK,  
*County of New York, ss:*

Before me, a Notary Public in and for said County and State, personally appeared JAMES LAWRENCE WHITE, the subscriber, who upon being duly sworn did depose and swear that he has caused service of the foregoing copies of "INTERVENING PETITION AND CLAIM OF MISSISSIPPI RIVER FUEL CORPORATION" to be made upon each of the persons whose names appear below by causing the same to be deposited properly addressed thereto with postage prepaid in a United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

United Gas Pipe Line Company  
(For the Account of Memphis Natural Gas Company)  
Shreveport 92, Louisiana

Memphis Natural Gas Company  
Memphis, Tennessee

C. C. Crabtree, Esq.

and

Wesley Harvell, Esq., Attorneys  
Memphis Light, Gas & Water Division of the City of Memphis

Union Planters National Bank Building  
Memphis, Tennessee

Southern Natural Gas Company  
Watts Building  
Birmingham, Alabama

Interstate Natural Gas Company  
405 Ouachita National Bank Building  
Monroe, Louisiana

Leon M. Fuquay, Esq.  
Federal Power Commission  
Washington 22, D. C.

Charles E. McGee, Esq.  
Assistant General Counsel for Federal Power Commission,  
Respondent  
1800 Pennsylvania Avenue, N. W.  
Washington, D. C.

Edward Rightor, Esq.  
Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, Louisiana

123 Warren O. Coleman, Esq.  
Attorney for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, Louisiana

Francis P. Burns, Esq.  
Attorney for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, Louisiana

W. C. Perrault, Esq.  
Attorney for Louisiana Public Service Commission  
Box 4005  
State Capitol  
Baton Rouge, Louisiana

Roland Kizer, Esq.  
Attorney for the City of Baton Rouge, Louisiana  
709 Louisiana National Bank Building  
Baton Rouge, Louisiana

Illinois Commerce Commission  
Springfield, Illinois—Attention: Mr. Warren Henry

John Randolph, Esq.

General Counsel for Missouri Public Service Commission  
Jefferson City, Missouri

Original Signed

JAMES LAWRENCE WHITE.

Subscribed and sworn to before me this  
6th day of February, 1948.

S. ANTHONY W. NEWMAN.

*Notary Public.*

(Seal)

124 In the United States Circuit Court of Appeals

*Petition of Intervention of City of Jackson—Filed  
February 16, 1948.*

To the Honorable Judges of the United States Circuit Court  
of Appeals for the Fifth Circuit:

The City of Jackson most respectfully would show unto this Court:

1. That the City of Jackson, Tennessee, is a municipal corporation and political sub-division of the State of Tennessee and submits this petition to intervene on behalf of itself, its approximately 5,420 citizens who are consumer customers of the West Tennessee Gas Company, and all other persons similarly situated, being the consumers of Brownsville, Humboldt, Ripley, Henning and Covington, Tennessee, all of whom are served by the West Tennessee Gas Company, a retail distributor of natural gas. Said petition is submitted under authority of an order of this Court entered January 28, 1948, and such other order as this Court may grant allowing this intervention.

125 2. That West Tennessee Gas Company purchases its gas supply for the above consumers from the Memphis Natural Gas Company, a petitioner in this cause; that said West Tennessee Gas Company disclaims any interest whatsoever to the impounded funds now held in this Court and has assigned whatever interest it may have had, or might have, to its consumers. Said disclaimer and assignment is attached hereto as Exhibit A.

3. Petitioner respectfully submits that the petition of the Memphis Natural Gas Company, hereinafter referred to as Memphis, should be denied in its entirety for the reason that all impounded funds are properly due to the ultimate consumer for whose benefit the original rate reduction was ordered.

*Panhandle Eastern Pipeline Company v. Federal Power Commission* (1946) 154 Federal (2) 909.

The delay occasioned by the appeal from the Federal Power Commission order of June 14, 1943, necessarily prevented further proper adjustment of rates through all levels, whether interstate or intra-state, to the consumer and such overcharge was thereby passed along to the ultimate consumer and is, therefore, in trust for the benefit of such consumer. To hold otherwise would be to allow Memphis to become the beneficiary of a "windfall" such as was deplored by the Court in *Natural Gas Pipeline Company of America v. Federal Power Commission*, 134 Federal (2) 263-5.

That rate making is based in the main on cost and fair return is not questioned, (*Panhandle Eastern Pipeline Company v. Federal Power Commission*, 324 U. S. 635), and when any 126 unexpected benefit is obtained over and above fair return, it is for the benefit of the consumer and not of an intermediate utility.

*Mississippi River Fuel Company v. Federal Power Commission*, 121 Federal (2) 159.

The primary purpose of the Natural Gas Act USCA Section 717 (a-a) is to protect the ultimate consumer against overcharges and such "exploitation" as is now being attempted.

*Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591.

4. Petitioner avers that this Court has authority to order a refund of all sums due to the consumers of the cities heretofore set out, all of whom now stand in the position of the West Tennessee Gas Company. Petitioner avers that no intra-state rate changes would be involved thereby inasmuch as it is agreed by West Tennessee Gas Company that said consumers are entitled to the refund. Further, in order to make such distribution, the Court has full authority to order Memphis to disclose from its records full information as to the amount of funds impounded in this Court, justly due said consumers, and to appoint a Master to supervise said distribution.

*Central States Electric Company v. City of Muscatine*, 324 U. S. 138.

5. Petitioner submits that in the event such order as outlined in Paragraph 4 above be not granted, this Honorable Court would have authority under the holding of *Central States Electric Company v. City of Muscatine*, supra, to retain said funds in this Court pending the decision upon application and hearing to be instituted by petitioner before the Federal Power Commission to obtain a refund of such impounded funds for its consumers and a lowering of rates charged by Memphis, which proceeding petitioner pledges to institute within sixty (60) days from date of such order.

## WHEREFORE PREMISES CONSIDERED, PETITIONER PRAYS:

1. That an order be granted allowing petitioner to intervene as stated and participate fully and in detail in the distribution of impounded funds.
2. That an order be granted: (1) denying the petition of the Memphis Natural Gas Company, and (2), directing the Clerk to distribute to the ultimate consumers of Jackson, Brownsville, Humboldt, Ripley, Henning and Covington, Tennessee, all impounded funds derived from gas consumed in such localities, and ordering further, (3), that Memphis disclose from its records the exact amounts due the consumers as a whole in each of said localities.
3. That a Master be appointed to distribute said funds.
4. In the alternative, if the prayer of Paragraph 2, Section 2, be disallowed; that all of said funds claimed by Memphis be retained in this Court pending the outcome of an application, and hearing thereon, before the Federal Power Commission to be instituted by the petitioner within sixty (60) days seeking an order of such Commission refunding impounded funds to said consumers and a lowering of the rates charged by Memphis.

128. 5. That the Court grant such other and different relief in the premises as may seem just and proper.

At Jackson, Tennessee, this 13th day of February, 1948.

Respectfully submitted,

THE CITY OF JACKSON,

By (Signed) GEORGE SMITH,

*Mayor.*

RUSSELL RICE

201 Bond Building

Jackson, Tennessee

Attorney for the City of Jackson

129

*Duly sworn to by George Smith  
jurat omitted in printing.*

130

*Affidavit of Service.*

STATE OF TENNESSEE

COUNTY OF MADISON

Before me, a Notary Public in and for the said State and County, personally appeared Russell Rice, Attorney for The City of Jackson, who, upon being duly sworn, did depose and swear that he has caused service of the foregoing petition to be made upon each of the persons whose names appear below by causing the same to be deposited, properly addressed thereto with postage

prepaid, in a United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

United Gas Pipe Line Company  
(For the Account of Memphis Natural Gas Company)  
Shreveport 92, Louisiana

Memphis Natural Gas Company  
Memphis, Tennessee

Southern Natural Gas Company  
Watts Building  
Birmingham, Alabama

Interstate Natural Gas Company  
405. Ouachita National Bank Bldg.  
Monroe, Louisiana.

Mr. Leon M. Fuquay, Secretary  
Federal Power Commission  
Washington 22, D. C.

Mr. Charles E. McGee  
Assistant General Counsel for Federal Power Commission  
Respondent  
1800 Pennsylvania Avenue, N. W.  
Washington, D. C.

Mr. Edward Rightor  
Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, Louisiana

Mr. Warren O. Coleman  
Attorney for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, Louisiana

Mr. Francis P. Burns  
Attorney for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, Louisiana

Mr. W. C. Pergault  
Attorney for Louisiana Public Service Commission  
Box 4005  
State Capitol  
Baton Rouge, Louisiana

Mr. Roland Kizer

Attorney for the City of Baton Rouge, Louisiana  
709 Louisiana National Bank Building  
Baton Rouge, Louisiana

Mr. William A. Dougherty

Attorney for Interstate Natural Gas Company, Inc., and  
Mississippi River Fuel Corporation  
30 Rockefeller Plaza  
New York 20, New York

131 Mr. James Lawrence White

Attorney for Interstate Natural Gas Company, Inc., and  
Mississippi River Fuel Corporation  
30 Rockefeller Plaza  
New York 20, New York

Mr. Henry P. Dart, Jr.

Attorney for Interstate Natural Gas Company, Inc.  
1008 Canal Building  
New Orleans, Louisiana

Mr. Henry Grady Price

Attorney for Interstate Natural Gas Company, Inc.  
1008 Canal Building  
New Orleans, Louisiana

Canada, Russell and Turner

Attorneys for Memphis Natural Gas Company  
Sterick Building  
Memphis, Tennessee.

(Signed) RUSSELL RICE.

Subscribed and sworn to before me this the 14th day of February, 1948.

(Signed) VESTER G. BRADY.

(Seal)

Notary Public.

My commission expires January 13, 1951.

*In the United States Circuit Court of Appeals  
For the Fifth Circuit*

Interstate Natural Gas Company v. Federal Power Commission et al.

No. 10701

*Affidavit of The West Tennessee Gas Company Disclaiming  
Interest in Funds Impounded in This Cause*

**TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT:**

The West Tennessee Gas Company, a corporation doing business within the State of Tennessee respectfully would show into this Honorable Court:

1. That it is engaged in the business of distributing natural gas for retail use in the following cities of Tennessee:

City	Consumer customers as of December 31, 1947
Jackson	5,420.
Brownsville	809
Humboldt	929
Ripley	705
Henning	142
Covington	884

That as such retailer it is subject to the control of the Railroad and Public Utilities Commission of the State of Tennessee.

2. That all gas distributed in the above cities by this petitioner is obtained from the Memphis Natural Gas Company pursuant to contract arrangements between petitioner and Memphis.

3. That this petition and affidavit is being prepared expressly for the purpose of being filed as an Exhibit to the Petition of The City of Jackson in the above styled cause.

133 4. For the purpose of disclaiming any and all interest to the funds impounded in this Court the West Tennessee Gas Company submits the following affidavit:

STATE OF TENNESSEE,

*County of Madison, ss:*

I, John Wisdom, being duly sworn, make oath that I am the duly elected and acting President of the West Tennessee Gas Company and that I am advised that certain funds have been im-

peounded in the United States Circuit Court of Appeals for the Fifth Circuit, arising from overcharges made by the Interstate Natural Gas Company.

The West Tennessee Gas Company hereby disclaims any and all interest in such funds and assigns whatever right they may have to their consumer customers of Jackson, Brownsville, Humboldt, Ripley, Henning and Covington, Tennessee.

In witness whereof I have hereunto set my hand this February 12, 1948, at Jackson, Tennessee.

/s/ JOHN WISDOM,  
*President.*

Subscribed and sworn to before me this February 12, 1948.

/s/ CLINT B. ROWLETT,  
*Notary Public.*

(seal)

My Commission expires April 4, 1949.

This February 12, 1948, at Jackson, Tennessee.

/s/ JOHN WISDOM,  
*President.*

*Affidavit*

STATE OF TENNESSEE,

*County of Madison, ss:*

I, John Wisdom, being duly sworn, make oath that I am the President of the West Tennessee Gas Company, the corporation filing the above, and that the statements contained therein are true to the best of my knowledge, information and belief.

/s/ JOHN WISDOM,  
*President.*

134 Subscribed and sworn to before me this February 12, 1948.

/s/ CLINT B. ROWLETT,  
*Notary Public.*

(Seal)

My Commission expires April 4, 1949.

135 In the United States Circuit Court of Appeals  
*Answer of Mississippi River Fuel Corporation to Intervening  
Petition of Illinois Commerce Commission—Filed Feb. 16, 1948*

Mississippi River Fuel Corporation (herein referred to as "Mississippi Corporation") has heretofore filed its intervening petition and claim setting for the basis of its claim for having paid to it

the entire amount of funds paid into this Honorable Court by Interstate Natural Gas Company, Incorporated (herein referred to as "Interstate"), in respect of excess charges collected for gas sold by Interstate to Mississippi Corporation during the pendency of the stay order heretofore entered by this Court on June 14, 1943.

By reason of certain contentions set forth in the petition of intervention filed herein by Illinois Commerce Commission, Mississippi Corporation files this answer in support of its own claim heretofore made in its intervening petition.

1. Mississippi Corporation admits that the Illinois Commerce Commission has jurisdiction over the rates of public utilities in Illinois and that two of such public utilities purchased natural gas from Mississippi Corporation during all of the period of the stay order.

136 2. The gas purchased by Mississippi Corporation from Interstate constitutes 22% of the total gas purchased by Mississippi Corporation for transportation and sale both for resale and for direct sale to industrial customers. Consequently, it is impossible to know just what portion of the gas purchased by Mississippi Corporation from Interstate actually was delivered by Mississippi Corporation to the utility customers in Illinois. Mississippi Corporation delivers natural gas to one industrial customer and two utility customers at many delivery points in the State of Arkansas. It delivers natural gas to two utility customers in the State of Missouri. In the States of Missouri and Illinois there are approximately 35 industrial customers which buy gas from Mississippi Corporation under private contracts not subject to regulation by the Federal Power Commission. The regulatory authority of the Illinois Commerce Commission over such sales is not admitted by Mississippi Corporation.

3. The money with which Mississippi Corporation paid Interstate for the gas purchased from Interstate came from its general funds collected from the sale of gas and it is impossible to identify any particular dollars so paid as having been received from the Illinois Power Company and Union Electric Power Company of Illinois. Likewise, it would be impossible to identify any of the funds deposited in the Court as ever having come from the ultimate consumers in Illinois of those two utility companies, and it is wholly impossible to identify the gas which was sold by Mississippi Corporation to Illinois Power Company and Union Electric Power Company as being the gas sold by Interstate to Mississippi Corporation.

4. Mississippi Corporation denies that it is furnishing a public utility service. Its operations are subject to regulation by the Federal Power Commission under the Natural Gas Act, but no part of said Act characterizes Mississippi Corporation as a public

137. utility, nor is the sale of its gas to distributing companies for resale stated to be a public utility service.

5. Mississippi Corporation refers to its intervening petition, herein filed for its claims and denies that it acted solely as an intermediary in any transaction of furnishing gas to the public. It says that it sold gas as a "natural-gas company" under the jurisdiction of the Federal Power Commission which has complete authority over the rates and charges of Mississippi Corporation; that the delivery of gas to a utility customer completed the obligation of Mississippi Corporation and it had no part in the delivery of gas to the ultimate consumers of the utility companies.

6. Mississippi Corporation states that the proposal of Illinois Commerce Commission that funds impounded in this Court be distributed to the estimated 11,453 ultimate consumers in Illinois of the two utility companies referred to would require determination of the reasonableness and unreasonableness of the rates of said Illinois utilities by this Court which has no authority in the premises; that whatever the Federal Power Commission does in the way of a rate order in the pending rate proceeding, Docket G-462, referred to in Mississippi's intervening petition, will determine what rate the two Illinois utilities should receive from Mississippi Corporation. What disposition should be made of any rate reduction to those utilities is a matter within the control of the Illinois Commerce Commission and is not a function of this Court.

WHEREFORE, Mississippi Corporation prays that the relief sought by the Illinois Commerce Commission be denied and that the 138 funds deposited to the credit of Mississippi Corporation be paid to it as prayed for in the intervening petition heretofore filed herein.

Respectfully submitted,

MISSISSIPPI RIVER FUEL CORPORATION.

By WILLIAM G. MARBURY,  
Vice President,

WILLIAM A. DOUGHERTY

JAMES L. WHITE

30 Rockefeller Plaza

New York 20, New York

Attorneys for Mississippi River Fuel Corporation

71392 *Duly Sworn to by William G. Marbury*  
*jurat omitted in printing.*

*Affidavit of Service*

STATE OF NEW YORK

County of New York, ss:

Before me, a Notary Public in and for said County and State, personally appeared JAMES LAWRENCE WHITIE, the subscriber, who upon being duly sworn did depose and swear that he has caused service of the foregoing copies of "ANSWER OF MISSISSIPPI RIVER FUEL CORPORATION TO INTERVENING PETITION OF ILLINOIS COMMERCE COMMISSION" to be made upon each of the persons whose names appear below by causing the same to be deposited properly addressed thereto with postage prepaid in a United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

United Gas Pipe Line Company

(For the Account of Memphis Natural Gas Company)  
Shreveport 92, Louisiana

Memphis Natural Gas Company

Memphis, Tennessee

C. C. Crabtree, Esq. and Wesley Harvell, Esq., Attorneys

Memphis Light, Gas &amp; Water Division of the City of Memphis

Union Planters National Bank Building

Memphis, Tennessee

Southern Natural Gas Company

Watts Building

Birmingham, Alabama

Interstate Natural Gas Company

405 Ouachita National Bank Building

Monroe, Louisiana

Leon M. Fuquay, Secretary

Federal Power Commission

Washington 22, D. C.

Charles E. McGee, Esq.

Assistant General Counsel for Federal Power Commission,  
Respondent

1800 Pennsylvania Avenue, N. W.

Washington, D. C.

Edward Righter, Esq.  
 Counsel for the City of New Orleans; Respondent  
 Canal Building  
 New Orleans 12, Louisiana

141 Warren O. Coleman, Esq.  
 Attorney for the City of New Orleans, Respondent  
 Whitney Building  
 New Orleans 12, Louisiana

Francis P. Burns, Esq.  
 Attorney for the City of New Orleans, Respondent  
 American Bank Building  
 New Orleans 12, Louisiana

W. C. Perrault, Esq.  
 Attorney for Louisiana Public Service Commission  
 Box 4005  
 State Capitol  
 Baton Rouge, Louisiana

Roland Kizer, Esq.  
 Attorney for the City of Baton Rouge, Louisiana  
 709 Louisiana National Bank Building  
 Baton Rouge, Louisiana

Illinois Commerce Commission  
 Springfield, Illinois—Attention: Mr. Warren Henry

John Randolph, Esq.  
 General Counsel for Missouri Public Service Commission  
 Jefferson City, Missouri

Original signed

JAMES LAWRENCE WHITE

Subscribed and sworn to before me this 13th day of February,  
 1948.

ANTHONY W. NEWMAN,

N. Y. Co. Clk's No. 27, Reg. No. 56-N-9. Registered in West-  
 chester County. Commission expires March 30, 1949.

(Seal)

Notary Public.

142 In the United States Circuit Court of Appeals

*Intervening Petition of the Public Service Commission of the State of Missouri—Filed Feb. 46, 1948*

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH JUDICIAL CIRCUIT:

COMES now the Public Service Commission of the State of Missouri (hereafter called Intervenor) and presents this the following as and for its intervening petition in this cause pursuant to the general order of this Honorable Court entered on the 28th day of January, 1948, allowing all interested parties to intervene and become parties to this cause.

1. Intervenor's legal name is "The Public Service Commission of the State of Missouri." As such body it is the legally constituted Commission for the regulation of public utilities operating in the State of Missouri and among such public utilities under the regulation of intervenor are natural gas corporations engaged in the business of distributing natural gas for ultimate consumption in the State of Missouri. Under the laws creating intervenor as the regulatory Commission of the State of Missouri for public utilities, intervenor is given the power to sue and be sued in the courts and to appear in the courts by and through its general counsel in any and all litigation concerning matters affecting public utilities operating in the State of Missouri.

143 2. Intervenor's interest in this cause now arises because a part of the moneys heretofore impounded and now held in the registry of this court pursuant to the previous order of the court were derived from rate payers in the State of Missouri who were users of natural gas in the State of Missouri during the impoundment period. It is a part of the duty of intervenor under the Laws of the State of Missouri to represent the rate payers in the State that are customers of any public utilities operating in the State and to see that there be restored to such rate payers any excess charges for natural gas where the money representing excess rate payments has been impounded by any court.

3. Mississippi River Fuel Corporation has filed with this Honorable Court its verified statement claiming \$1,484,582.53 of the moneys impounded and now held in the registry of this Honorable Court, the claim being based upon the fact that during the impoundment period Mississippi River Fuel Corporation purchased a part of its natural gas requirements from Interstate Natural Gas Company, Inc., the Petitioner in this cause. Mississippi River Fuel Corporation like petitioner in this cause is a Natural Gas Pipe Line within the meaning of the Natural Gas Act and under

the jurisdiction of the Federal Power Commission. Mississippi River Fuel Corporation, during the impoundment period, supplied natural gas to three distributing companies in the State of Missouri, namely: LaClede Gas Light Company, St. Louis County Gas Company, and Missouri Natural Gas Company. Each of said distributing companies, during the impoundment period in this case, purchased their requirements for natural gas at wholesale from Mississippi River Fuel Corporation and in turn distributed and sold said natural gas to the ultimate consumers thereof in the State of Missouri at retail. The LaClede Gas Light Company sold and distributed the gas so purchased from Mississippi River Fuel Corporation to ultimate consumers in the City of St. Louis, Missouri.

144 The St. Louis County Gas Company sold and distributed the gas so purchased from Mississippi River Fuel Corporation to ultimate consumers in the metropolitan area surrounding the City of St. Louis, same being a number of municipalities located in the area of St. Louis county, Missouri. The Missouri Natural Gas Company sold and distributed the gas so purchased from Mississippi River Fuel Corporation to ultimate consumers in a number of smaller cities and towns located in several counties in the State of Missouri in an area lying south of the City of St. Louis and along the eastern side of the State of Missouri. The St. Louis County Gas Company is no longer existant, same having been purchased by and merged with the LaClede Gas Light Company by proper authority of this intervenor on the ..... day of ..... 1946, so that at the present time all of the ultimate consumers who used the natural gas supplied by Mississippi River Fuel Corporation during the impoundment period are now customers of either the LaClede Gas Light Company or the Missouri Natural Gas Company.

4. During all the impoundment period in this case the Federal Power Commission was in the process of making an investigation of the rates and charges of Mississippi River Fuel Corporation for the natural gas which it was selling at wholesale to gas distribution companies in the State of Missouri and other states. Pursuant to that investigation and a hearing held by the Federal Power Commission, that Commission ordered Mississippi River Fuel Corporation to make a substantial reduction in its wholesale rates for natural gas, and the reduction so ordered was immediately put into effect by Mississippi River Fuel Corporation by the filing with the Federal Power Commission new schedule of rates for wholesale sales of natural gas. The said finding of the Federal Power Commission was based upon the business done by Mississippi River Power Corporation during the year 1943, and was, in effect, a finding that the wholesale rates for natural gas of the Mississippi River Fuel Corporation, during the year 1943 and thereafter, were

145. excessive, not just and reasonable and, therefore, unlawful under the provisions of the Natural Gas Act. Among other provisions of the said Order of the Federal Power Commission finding the wholesale rates of Mississippi River Fuel Corporation to be unlawful was the following:

"The cost of gas purchased by Mississippi from its affiliate, Interstate Natural Gas Company, will decrease in the event the reviewing Court upholds this Commission's 1943 order reducing the rate by \$301,329. The prescribed rate has been stayed pending Court review and the excess revenues over the order rate are being impounded. Mississippi will receive an unearned windfall when the rate is declared valid by the Court and refunds ordered. Under the authority to fix rates for the future, however, the Commission will direct Mississippi to pass on the proper portion of that reduction to the customers purchasing gas for resale. This cost of gas purchased by Mississippi is a 'commodity' charge, and when final judicial review validates the reduction, Mississippi should reduce its rates to the seven utility customers by the proportion of the volumes of gas it sells to these utilities to the total volume of gas sales in the year of the final judicial decision." (F. P. C. Opinion No. 126, in re: Mississippi River Fuel Corporation, et al., Docket G-462, 4 F. P. C. 340 at 359.)

5. In view of the aforesaid findings by the Federal Power Commission touching the wholesale rates for natural gas of Mississippi River Fuel Corporation that portion of the monies impounded and now held in the registry of this Honorable Court which is now being claimed by Mississippi River Fuel Corporation (\$1,484,582.53) was unlawfully collected from the ultimate consumers of natural gas in the State of Missouri and rightfully belongs to such ultimate consumers and should be ordered by this Honorable Court to be paid to such ultimate consumers in the State of Missouri. By orders of this intervenor and by agreements between this intervenor and the Laclede Gas Light Company (which now includes the St. Louis County Gas Company) and also the Missouri Natural Gas Company, the said distribution companies have consented that all of said impounded monies so unlawfully collected from the ultimate consumers of natural gas in the State of Missouri should be paid to the said ultimate consumers, and said distribution companies, to-wit: Laclede Gas Light Company (including St. Louis County Gas Company and Missouri Natural Gas Company will, if and when deemed appropriate by this Honorable Court, file with the Court a disclaimer of any and all interest in said impounded funds and request that this Honorable Court make distribution of said monies to the customers of said distribution companies.

WHEREFORE Intervenor prays this Honorable Court to make a determination of the issues joined in this cause and by its judgment and decrees to order the impounded monies derived from sales of natural gas in the State of Missouri to be distributed to the ultimate consumers in the State of Missouri, and will the Court make such further determinations and enter such further orders, judgments, and decrees as may be required the premise considered.

PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

By JOHN P. RANDOLPH,  
*General Counsel.*  
WILBUR F. HALL,  
*Assistant Counsel.*

147

In the  
United States Circuit Court of Appeals

*Answer of Mississippi River Fuel Corporation to Intervening Petition of Public Service Commission of Missouri—Filed Feb. 16, 1948*

Mississippi River Fuel Corporation (herein referred to as "Mississippi Corporation") has heretofore filed its intervening petition and claim setting forth the basis of its claim for having paid to it the entire amount of funds paid into this Honorable Court by Interstate Natural Gas Company, Incorporated (herein referred to as "Interstate"), in respect of excess charges collected for gas sold by Interstate to Mississippi Corporation during the pendency of the stay order heretofore entered by this Court on June 14, 1943.

By reason of certain contentions set forth in the petition of intervention filed herein by Public Service Commission of Missouri, Mississippi Corporation files this answer in support of its own claim heretofore made in its intervening petition.

1. Mississippi Corporation admits that the Public Service Commission of the State of Missouri (herein referred to as the "Missouri Commission") has regulatory authority over public utilities operated in Missouri and that such jurisdiction extends over Laclede Gas Light Company, St. Louis County Gas Company and Missouri Natural Gas Company, all of which purchased natural gas from Mississippi Corporation during the period of the stay order entered by this Court on June 14, 1943.

148 2. The gas purchased by Mississippi Corporation from Interstate constitutes 22% of the total gas purchased by Mississippi Corporation for transportation and sale both for resale and for direct sale to industrial customers. Consequently, it is impossible to know just what portion of the gas purchased by Mis-

issippi Corporation from Interstate actually was delivered by Mississippi Corporation to the utility customers in Missouri. Mississippi Corporation delivers natural gas to one industrial customer and two utility customers at many delivery points in the State of Arkansas. It delivers natural gas to two utility customers in the State of Missouri. In the States of Missouri and Illinois there are approximately 35 industrial customers which buy gas from Mississippi Corporation under private contracts not subject to regulation by the Federal Power Commission. The regulatory authority of the Missouri Commission over such sales is not admitted by Mississippi Corporation.

3. The money with which Mississippi Corporation paid Interstate for the gas purchased from Interstate came from its general funds collected from the sale of gas and it is impossible to identify any particular dollars so paid as having been received from Laclede Gas Light Company and Missouri Natural Gas Company. Likewise, it would be impossible to identify any of the funds deposited in the Court as ever having come from the ultimate consumers in Missouri of those two utility companies, and it is wholly-impossible to identify the gas which was sold by Mississippi Corporation to Laclede Gas Light Company and Missouri Natural Gas Company as being the gas sold by Interstate to Mississippi Corporation.

4. Laclede Gas Light Company and St. Louis County Gas Company did not during the stay period distribute straight natural gas to their consumers, but distributed a mixed gas of which the natural gas purchased from Mississippi Corporation was a component. Consequently, it would be impossible to trace

the gas sold by Interstate to Mississippi to any consumers of Laclede Gas Light Company and St. Louis County Gas Company by reason of the other sources of gas used by those companies with which the natural gas purchased from Mississippi Corporation was mixed. Laclede Gas Light Company did sell straight natural gas to certain industrial customers which was purchased from Mississippi Corporation.

5. Mississippi Corporation admits that St. Louis County Gas Company sold its assets to Laclede Gas Light Company so that whatever claim St. Louis County Gas Company might have in the premises is now owned by Laclede Gas Light Company.

6. Referring to the matter set forth in Item 4 of the petition, Mississippi Corporation admits that the Federal Power Commission, during the injunction period, was engaged in an investigation of its rates and charges for gas sold at wholesale to the distributing companies in Missouri for resale; that a rate reduction was ordered; and that the same was put into effect with appropriate reservations to recover from the distributing companies any additional amounts later found to be lawful, and admits that the quoted

portion of the Opinion of the Commission was related to the purchase of gas by Mississippi Corporation from Interstate. However, that rate reduction order has been reversed and the proceeding is now pending before the Federal Power Commission, all as set forth in Mississippi Corporation's intervening petition. Whatever rates will ultimately be determined to be reasonable will be the lawful and legal rates which Mississippi Corporation may charge the utility companies in Missouri and this Court has no jurisdiction or authority to enter any order in respect of the impounded fund relating to those rates. Accordingly, this claim filed by the distributing companies referred to can do nothing more than relate to rates to be fixed by the Federal Power Commission covering the period of its order and this Court has no authority to make any order which would affect the determination of rates during that period which the Federal Power Commission is under direction from the Circuit Court of Appeals for the District of Columbia. Reference is made to the intervening petition and claim of Mississippi Corporation heretofore filed herein for references to the reversal order entered by the Circuit Court of Appeals for the District of Columbia and the present pendency of the rate proceeding before the Federal Power Commission.

7. Mississippi Corporation says that the order of the Commission referred to in the intervening petition of the Missouri Commission recognized that any reduction received from Interstate should be apportioned to the utility customers on the basis of the volumes sold to them. Of the excess charges paid by Mississippi Corporation to Interstate, only approximately 30% could be allocated to all of the utility customers in all states under the Commission's Order. The Missouri Commission's Jurisdiction over the direct sales by Mississippi Corporation is being contested by it and neither the Missouri Commission, the Federal Power Commission nor this Court has any jurisdiction over such sales. The petition of the Missouri Commission apparently claims that the entire amount of excess charges relate to gas which was sold by utility companies in Missouri. As heretofore stated, it is impossible to determine the ultimate destination of the gas in question, but the claims made by the Missouri Commission are even more extensive than the Order of the Federal Power Commission referred to in its petition.

WHEREFORE, Mississippi Corporation prays that the relief sought by the Public Service Commission of the State of Missouri be denied and that the entire amount of funds impounded to its credit in this Court be paid to it.

Respectfully submitted,

MISSISSIPPI RIVER GAS CORPORATION,  
By WILLIAM G. MARSHALL,  
Vice President.

WILLIAM A. DUGHERTY,

Original Signed

JAMES LAWRENCE WHITE,

JAMES L. WHITE,

30 Rockefeller Plaza,

New York 20, New York.

Attorneys for Mississippi River Fuel Corporation.

152

*Duly sworn to by William A. Marbury  
jurat omitted in printing.*

153

*Affidavit of Service*

STATE OF NEW YORK,

County of New York, ss.

Before me, a Notary Public in and for said County and State, personally appeared JAMES LAWRENCE WHITE, the subscriber, who upon being duly sworn did depose and swear that he has caused service of the foregoing copies of "ANSWER OF MISSISSIPPI RIVER FUEL CORPORATION TO INTERVENING PETITION OF PUBLIC SERVICE COMMISSION OF MISSOURI" to be made upon each of the persons whose names appear below by causing the same to be deposited properly addressed thereto with postage prepaid in a United States Post Office regularly maintained by the Government of the United States. Service has so been made upon:

United Gas Pipe Line Company

(For the Account of Memphis Natural Gas Company)

Shreveport #2, Louisiana

Memphis Natural Gas Company

Memphis, Tennessee

C. C. Crabtree, Esq.

and

Wesley Harvell, Esq., Attorneys

Memphis Light, Gas and Water Division of the City of  
Memphis

Union Planters National Bank Building

Memphis, Tennessee

Southern Natural Gas Company

Watts Building

Birmingham, Alabama

Interstate Natural Gas Company

405 Ouachita National Bank Building

Monroe, Louisiana

Leon M. Fiquay, Secretary  
Federal Power Commission  
Washington 22, D. C.

Charles E. McGee, Esq.  
Assistant General Counsel for Federal Power Commission  
Respondent

1800 Pennsylvania Avenue, N. W.  
Washington, D. C.

Edward Rightor, Esq.  
Counsel for the City of New Orleans, Respondent  
Capal Building  
New Orleans 12, Louisiana

154. Warren O. Coleman, Esq.  
Counsel for the City of New Orleans, Respondent  
Whitney Building  
New Orleans 12, Louisiana

Francis P. Burns, Esq.  
Counsel for the City of New Orleans, Respondent  
American Bank Building  
New Orleans 12, Louisiana

W. C. Perrault, Esq.  
Attorney for Louisiana Public Service Commission  
Box 4005  
State Capitol  
Baton Rouge, Louisiana

Roland Kizer, Esq.  
Attorney for the City of Baton Rouge, Louisiana  
709 Louisiana National Bank Building  
Baton Rouge, Louisiana

Illinois Commerce Commission  
Springfield, Illinois—Attention: Mr. Warren Henry

John Randolph, Esq.  
General Counsel for Missouri Public Service Commission  
Jefferson City, Missouri

Original Signed

JAMES LAWRENCE WHITE

Subscribed and sworn to before  
me this 13th day of February, 1948.

(Seal) ANTHONY W. NEWMAN,

*Notary Public*

N. Y. Co. Clk's No. 27, Reg. No. 56-N-9

Registered in Westchester County

Commission Expires March 30, 1949.

## 155 In United States Circuit Court of Appeals

*Argument and Submission February 16th, 1948.*

On this day the motion of Integstate Natural Gas Company, Incorporated, for an Order for Distribution of Funds was called, and, after argument by William A. Dougherty, Esq., for petitioner and Mississippi River Fuel Corporation, Intervener; and Bradford Ross, Esq., General Counsel for Federal Power Commission, Respondent; and Forney Johnston, Esq., for Southern Natural Gas Company; C. Huffman Lewis, Esq., for United Gas Pipe Line; Edward P. Russell, Esq., for Memphis Natural Gas Company; Warren Henry, Esq., for Illinois Commerce Commission; Chas. C. Crabtree, Esq., for Memphis Light, Gas & Water Division; Wilbur F. Hall, Esq., for Missouri Public Service Commission, and W. Russell Rice, Esq., for City of Jackson, Tennessee, Interveners, was submitted to the Court.

156

In the

## United States Circuit Court of Appeals

*Amended Petition of Intervention of United Gas Pipe Line Company—Filed Feb. 19, 1948*

Now Comes United Gas Pipe Line Company whose Petition to Intervene has been allowed in the above proceeding and, with leave of Court first obtained files this its Amended Petition of Intervention.

1.

Intervenor asserts its rights to receive all sums of money deposited in the Registry of this Court on account of natural gas sold to Intervenor by Interstate Natural Gas Company for the period June 1st, 1943, to December 10th, 1945, and which gas was resold by Intervenor to Memphis Natural Gas Company.

2.

Should payment of said funds be ordered made direct to Memphis Natural Gas Company; Intervenor will make no objection thereto in the event it be relieved from any and all liability to any and all parties whosoever in connection therewith.

157

3.

Intervenor upon receipt of said funds will promptly transmit same in full to Memphis Natural Gas Company.

Intervenor insists that there are no parties lawfully entitled to receive said funds except Intervenor.

WHEREFORE, Intervenor prays that this its amended Petition of Intervention may be allowed and that an order be entered directing that all of said funds be paid to Intervenor as hereinabove set forth. Intervenor prays for all orders necessary and for full, general and equitable relief in the premises and for costs.

C. HUFFMAN LEWIS,  
Counsel for  
United Gas Pipe Line Company.

C. HUFFMAN LEWIS,  
1525 Slattery Building,  
Shreveport, Louisiana.

Of Counsel:

WILKINSON, LEWIS & WILKINSON,  
Shreveport, Louisiana.

158 *Duly sworn to by M. A. Abernathy  
jurat omitted in printing.*

Let the Amended Motion be filed.

(Signed) J. C. HUTCHESON, Jr.,  
U. S. Circuit Judge.

Feb. 19, 1948.

159 *Certificate of Service*

I HEREBY CERTIFY that I have this day served a copy of the attached amended petition of intervention of United Gas Pipe Line Company on the following named parties of record in this proceeding, by mailing a copy thereof, postage prepaid to the addresses shown on the list below:

By C. HUFFMAN LEWIS,  
Counsel for  
United Gas Pipe Line Company.

February 18, 1948.

Federal Power Commission  
Bradford Ross, General Counsel  
1800 Penn. Ave.  
Washington 25, D. C.

Public Service Commission of Missouri  
Hon. Archie McDuffie, Secretary  
Jackson, Miss.

Public Service Commission of Missouri  
 Hon. Fred H. Carr  
 Jefferson City, Mo.

Public Service Commission of Louisiana  
 Hon. P. A. Frye, Secretary  
 Baton Rouge, La.

Public Service Commission of Arkansas  
 Hon. M. H. Mehaffy, Secretary  
 Little Rock, Ark.

Henry P. Dart, Jr.  
 1008 Canal Bldg.  
 New Orleans 12, La.

Alden T. Shotwell  
 Ouachite Nat'l Bk. Bldg.  
 Monroe, La.

William A. Dougherty  
 30 Rockefeller Plaza  
 New York, N. Y.

Roland C. Kizer  
 709-10 La. Nat'l Bk. Bldg.  
 Baton Rouge, La.

Chas. C. Crabtree  
 507 V & P Bldg.  
 Memphis, Tenn.

Forney Johnston  
 First National Bk. Bldg.  
 Birmingham, Ala.

160 Memphis Natural Gas Company  
 Sterick Bldg.  
 Memphis, Tenn.

Mississippi River Fuel Corp.  
 William G. Marbury, Vice President  
 407 North 8th St.  
 St. Louis 1, Mo.

W. C. Perrault, Esq.  
 First Ass't. Atty. General of Louisiana  
 4005 State Capitol Bldg.  
 Baton Rouge, La.

Illinois Power Company  
 Allen VanWyk, President  
 Decatur, Ill.

Union Electric Power Company

H. C. Scott, Manager

E. St. Louis, Ill.

Southern Natural Gas Company

Birmingham, Alabama

Edward P. Russell

29th Floor, Sterick Bldg.

Memphis, Tenn.

Russell Rice

201 Bond Bldg.

Jackson, Tenn.

*Attorney for City of Jackson.*

161

In the

United States Circuit Court of Appeals  
For the Fifth Circuit

No. 10701.

Interstate Natural Gas Company, Incorporated, *Petitioner,*

v.

Federal Power Commission, Louisiana Public Service Commission,  
City of New Orleans, Louisiana, City of Baton Rouge, Louisiana,  
*Respondents.*

*Petition for Review of an Order of the Federal Power Commission,  
sitting at Washington, D. C.*

*Opinion Filed March 12, 1948.*

*On Motion for an Order for Distribution of Funds.*

Before HUTCHESON, HOLMES, and McCORMICK, Circuit Judges.

PER CURIAM: Admitting that it is not entitled to have re-

162 turned to it sums it deposited in this court pursuant to the stay order of December 5, 1944, petitioner is here asking an order directing the distribution of such sums and absolving petitioner from further liability or accountability in respect thereto.

The matter comes up in this way. By an order entered April 27, 1943, modified June 9, 1943, the Federal Power Commission

reduced the rates and charges of Interstate Natural Gas Company, Inc., on sales made by Interstate in the Monroe field in Louisiana to pipe line companies, each being a natural gas company subject to the jurisdiction of the Commission.

Contesting this order as beyond the jurisdiction of the Commission, Interstate filed its petition for a review in this court, and at the same time applied to this court for, and was granted, a stay of the Commission's order, conditioned upon Interstate's paying into the registry of this court the monthly difference between payments under existing rates and those required under the rate reducing order of the Commission.

163. During the pendency of the review proceeding, Interstate

accepted certain of the reductions ordered by the Commission which related to gas delivered to distributing companies in New Orleans and adjacent territory, rate schedules were filed and accepted by the Commission, and, by agreement of all parties, that portion of the impounded funds relating to the sales in question were paid to the distributing companies in the New Orleans area, and excess payment on account thereof was returned to Interstate.

The case then proceeded to hearing on the question of the jurisdiction of the Commission over sales made by Interstate in the Monroe field in Louisiana to Mississippi River Fuel Corporation, Southern Natural Gas Company, and United Gas Pipe Line Company for account of Memphis Natural Gas Company.

This court affirmed<sup>2</sup> the order of the Commission reducing Interstate's rates to the three pipe line companies. Its judgment was affirmed in the Supreme Court, and commencing with deliveries for the month of October, 1947, collections have been made by Interstate at the rate fixed by the order of the Commission, and, therefore, no further deposits are being made pursuant to the stay order. The rate schedules filed as provided for in the Commission's order were made effective for all bills rendered to the pipe line companies on and after July 15, 1943.

The Order specifically provided that:

"The amounts so deposited shall remain on deposit subject, however, to the further Order of Orders of this Court to be returned to such ultimate consumers of gas or other persons to whom the Court shall find the same should be returned, as contemplated by the provisions of the Natural Gas Act. Upon receipt of each deposit the Clerk of this Court shall notify the Federal Power Commission stating the amount of such deposit and the total amount then on deposit in said fund."

and further:

"Full power and jurisdiction is reserved to cancel or modify this Order and to enter any other orders, with or without application of the parties, to protect or to promote the rights and interests of the parties to this litigation and of the ultimate consumers or other parties financially interested in the impounded funds."

164 In addition to the sums deposited in the registry of the court, it is recognized that Interstate owes each of the companies an additional amount which it has not deposited but which it agrees to, and will, pay as a part of the distribution ordered.

The three pipe line companies above named, who paid the excess charges to Interstate, have filed interventions, asking that the charges exacted from them in excess of the Commission's order be returned to them.

The Federal Power Commission, the Public Service Commission of the State of Missouri, Memphis Light, Gas & Water Division of the City of Memphis, Illinois Commerce Commission, and the City of Jackson, Tennessee, have appeared to oppose the distribution to the pipe line companies and to insist that the funds be distributed to the ultimate consumers of the gas purchased by the pipe line companies from Interstate or to such other persons and institutions as may appear equitably entitled thereto.

A careful consideration of the opposing contentions, in the light of the undisputed facts leaves us in no doubt that, whatever may be the rights of ultimate consumers or others to require the pipe line companies who have overpaid Interstate to account to them in respect of such overpayments, it is not our function to search out or declare them.<sup>3</sup> The only appropriate order for this court to enter is one requiring Interstate to repay to the three pipe line companies the moneys which Interstate wrongfully exacted from them under the protection of our order, such distribution to 165 the three pipe line companies, however, to be without prejudice to the rights, if any, of ultimate consumers or others to hold said companies to account in respect thereof.

Let an appropriate order be drawn and presented for entry.

166

In the

United States Circuit Court of Appeals

*Application of Respondent Federal Power Commission for an Order  
Staying the Issuance of the Mandate—Filed April 1, 1918.*

To THE HONORABLE, THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The Federal Power Commission, a Respondent, by its counsel, hereby respectfully presents its application for an order staying the issuance of the mandate of this Honorable Court in the above-

entitled cause, under and pursuant to the provisions of Section 8(d) of the Act of February 13, 1925, 43 Stat. 940, 28 U. S. C. A., Section 350, and in support of its application, shows the following:

1. On March 12, 1948, this Honorable Court issued an opinion adverse to Respondent Federal Power Commission on Petitioner's motion for an order directing the distribution of funds impounded during the pendency of a petition for review in this Honorable Court of an order of the Federal Power Commission reducing the rates and charges of Petitioner.

2. Pursuant to Rule 32 of the Rules of this Honorable Court the mandate will issue, unless otherwise ordered, on or after April 2, 1948.

3. Respondent Federal Power Commission requires additional time to consider whether a petition for a writ of certiorari should be made to the Supreme Court of the United States and, in the event it is determined that a petition for a writ of certiorari should be filed, to prepare and file such petition.

167 4. This application is filed in good faith, is not interposed for the purpose of delay, and if it be determined that a petition for a writ of certiorari should be filed, such petition will be prepared and filed without delay.

WHEREFORE, Respondent Federal Power Commission requests that this Honorable Court enter its order staying the issuance of the mandate in the above-entitled cause to and including May 22, 1948; and in the event a petition for a writ of certiorari is docketed in the Clerk's Office of the Supreme Court of the United States on or before May 22, 1948, then until after the Supreme Court passes upon the petition.

Respectfully submitted,

BRADFORD ROSS,  
*General Counsel,*  
*Federal Power Commission.*

Dated at Washington, D. C., March 30, 1948.

168 *Affidavit of Service*

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

Before me, a notary public in and for the District of Columbia, personally appeared Bradford Ross, General Counsel for the Federal Power Commission, who upon being first duly sworn, on oath did depose and say that he duly served copies of the foregoing

motion upon each of the persons whose name appears below, by depositing the same in the United States Post Office at Washington, D. C., in sealed envelopes properly addressed thereto with postage prepaid, on the 30th day of March, 1948. Service has so been made upon:

William A. Dougherty, Esq.

Counsel for Interstate Natural Gas Company, Incorporated  
and Mississippi River Fuel Corporation

30 Rockefeller Plaza

New York 20, New York

United Gas Pipe Line Company

Shreveport 92, Louisiana

Southern Natural Gas Company

Watts Building

Birmingham, Alabama

Mississippi River Fuel Corporation

407 North Eighth Street

St. Louis 4, Missouri

Edward Rightor, Esq.

Counsel for the City of New Orleans, Respondent

Canal Building

New Orleans 12, Louisiana

Warren O. Coleman, Esq.

Attorney for the City of New Orleans, Respondent

Whitney Building

New Orleans 12, Louisiana

François P. Burns, Esq.

Attorney for the City of New Orleans, Respondent

American Bank Building

New Orleans 12, Louisiana

W. C. Perrault, Esq.

Attorney for Louisiana Public Service Commission

Box 4005

State Capitol

Baton Rouge, Louisiana

Roland Kizer, Esq.

Attorney for the City of Baton Rouge, Louisiana

709 Louisiana National Bank Building

Baton Rouge, Louisiana

Warren Henry, Esq.  
 Illinois Commerce Commission  
 230 Centennial Building  
 Springfield, Illinois

Forney Johnston, Esq.  
 Attorney for Southern Natural Gas Company  
 First National Building  
 Birmingham 3, Alabama

Russell Rice, Esq.  
 Attorney for the City of Jackson  
 201 Bond Building  
 Jackson, Tennessee

Alden T. Shotwell, Esq.  
 Attorney for Memphis Natural Gas Company  
 Ouachita National Bank  
 Monroe, Louisiana

Edw. P. Russell, Esq.  
 Attorney for Memphis Natural Gas Company  
 29th Floor, Sterick Building  
 Memphis, Tennessee

Gordon Persons, Esq.  
 President, Alabama Public Service Commission  
 Montgomery 1, Alabama

John P. Randolph, Esq.  
 General Counsel, Missouri Public Service Commission  
 Jefferson City, Missouri

Chas. C. Crabtree, Esq.  
 Attorney for Memphis Light, Gas and Water Division  
 507 Union Planters Bank Building  
 Memphis, Tennessee

Walter R. McDonald, Esq.  
 Chairman, Georgia Public Service Commission  
 Atlanta, Georgia

Henry P. Dart, Jr., Esq.  
 Attorney for Interstate Natural Gas Company, Incorporated  
 1008 Canal Building  
 New Orleans, Louisiana

170 C. Huffman Lewis, Esq.  
Attorney for the United Gas Pipe Line Company  
1525 Slattery Building  
Shreveport, Louisiana

(Signed) BRADFORD ROSS.

Subscribed and sworn to before me this 30th day of March, 1948.

(SEAL)

(Signed) BERNICE P. STONE,  
*Notary Public in and for the  
District of Columbia, Washington.*

My commission expires June 14, 1949.

171 In United States Circuit Court of Appeals  
No. 10701.

Interstate Natural Gas Company, Incorporated, a Corporation,

Federal Power Commission, Louisiana Public Service Commission,  
City of New Orleans, Louisiana, City of Baton Rouge, Louisiana.

*Order Directing Distribution of Funds—May 12, 1948.*

This cause came on for hearing on the motion filed on December 22, 1947, of Interstate Natural Gas Company, Incorporated, petitioner herein, for an order directing the distribution of funds heretofore deposited in the registry of this Court pursuant to a stay of the rate reduction order of the Federal Power Commission, heretofore affirmed in this proceeding, said stay having been granted by an Order of this Court on June 14, 1943.

Pursuant to the order of this Court entered on January 28, 1948, intervening petitions and claims were filed by Memphis Natural Gas Company, Mississippi River Fuel Corporation and Southern Natural Gas Company. United Gas Pipe Line Company filed an original and amended petition of intervention asserting its rights to receive its part of said funds, and stating that upon receipt of same it would promptly remit same in full to Memphis Natural Gas Company.

The Federal Power Commission, the Public Service Commission of the State of Missouri, Memphis Light, Gas and Water Division of the City of Memphis, Illinois Commerce Commission and the City of Jackson, Tennessee, have filed intervening petitions oppos-

ing the distribution of the deposited funds to the claimant pipe line companies named above.

Pursuant to said stay order there has been paid into the registry of this Court \$2,444,573, representing amounts collected in excess of the rates finally approved by the Federal Power Commission, and petitioner has stated that additional monies in excess of the approved rates were collected but not deposited in the registry of this Court. All of said monies were collected from the following named purchasers of gas from petitioner and the amounts due to each of said purchases of gas by reason of said excess collections are as follows:

Due to	Paid into Court	Not paid into Court	Total
United Gas Pipe Line Company (Account Memphis Natural Gas Company) .....	\$ 323,948.32	\$ 20,658.06	\$ 344,606.38
Memphis Natural Gas Company—direct .....	235,646.06	12,213.38	247,859.44
Mississippi River Fuel Corporation .....	1,309,729.72	174,852.81	1,484,582.53
Southern Natural Gas Company .....	575,248.90	112,907.81	688,156.71
<b>Total</b> .....	<b>\$2,444,573.00</b>	<b>\$320,632.06</b>	<b>\$2,765,205.06</b>

Each of the intervening pipe line companies enumerated above agrees that the total amounts set forth as having been collected from it represent the correct amounts collected from it in excess of the rates finally approved and filed with the Federal Power Commission.

Hearings on the matter of distribution of said funds were held on January 28, 1948, and February 16, 1948, at which latter hearing oral arguments were heard. Upon consideration of all the intervening petitions and claims, answers thereto and briefs filed by the petitioner and all intervenors and the oral arguments, the Court HEREBY ORDERS:

L. That the Clerk of this Court be, and hereby is directed to disburse the funds paid into the registry of the Court to each of the following companies in the amount shown opposite the name of each, viz:

United Gas Pipe Line Company, for the Account of Memphis Natural Gas Company.....	\$ 323,948.32
Memphis Natural Gas Company.....	235,646.06
Mississippi River Fuel Corporation.....	1,309,729.72
Southern Natural Gas Company.....	575,248.90
 Total.....	 \$2,444,573.00

473. 2. That petitioner pay to each of the said named companies the amount shown opposite the name of each, viz:

United Gas Pipe Line Company, for the Account of Memphis Natural Gas Company.....	\$ 20,658.06
Memphis Natural Gas Company.....	12,213.38
Mississippi River Fuel Corporation.....	174,852.81
Southern Natural Gas Company.....	112,907.81
 Total.....	 \$320,632.06

which represents a sum of money not paid into the registry of the Court, but admitted by petitioner to have been collected from each of the said companies in excess of the rates finally approved and filed with the Federal Power Commission.

3. The foregoing payments by the Clerk of this Court and by petitioner shall be without prejudice to the rights, if any, of ultimate consumers or others to hold United Gas Pipe Line Company, Memphis Natural Gas Company, Mississippi River Fuel Corporation and Southern Natural Gas Company to account in respect thereof, provided; however, that upon payment by United Gas Pipe Line Company to Memphis Natural Gas Company of the foregoing amounts ordered paid to United Gas Pipe Line Company said company shall be relieved from any and all liability to any and all parties whomsoever in connection therewith, and the rights, if any, of ultimate consumers or others in respect of said amounts shall be exercised against Memphis Natural Gas Company in the same manner as in respect of the amounts paid directly to Memphis Natural Gas Company.

4. Upon the distribution by the Clerk of this Court of the funds as set forth in paragraph 1 above and the payments by petitioner of the amounts set forth in paragraph 2 above, the acceptance thereof by United Gas Pipe Line Company, Memphis Natural Gas Company, Mississippi River Fuel Corporation and Southern Natural Gas Company shall operate and be taken as a waiver by each of all further demands by each upon the funds impounded in this proceeding, and said petitioner shall be forever and completely absolved from any and all

liability in respect and arising out of said Stay Order entered June 14, 1943.

5. All costs incurred herein including those attributable to the payment of the said amounts into the registry of this Court shall be paid by petitioner.

Approved for the Court:

(Signed) J. C. HUTCHESON, JR.,  
*Presiding Judge*

(Signed) E. R. HOLMES,  
*U. S. Circuit Judge*

(Signed) LEON McCORD,  
*U. S. Circuit Judge*

Dated May 12, 1948.

175 In United States Circuit Court of Appeals

No. 10701

Interstate Natural Gas Company, Incorporated,

Federal Power Commission, Louisiana Public Service Commission,  
City of New Orleans, Louisiana, City of Baton Rouge, Louisiana.

*Order Staying Execution of Order to Distribute Funds*

May 15, 1948

Pursuant to the motion of the FEDERAL POWER COMMISSION, it is ORDERED that the order of this Court to distribute the funds entered on May 12th, 1948, be stayed until May 22nd, 1948, pending the filing of a petition to the Supreme Court of the United States for a writ of certiorari, and in the event that said petition for certiorari is filed in the Supreme Court on or before May 22nd, 1948, then until the Supreme Court passes upon said petition.

IT IS FURTHER ORDERED the counsel for the FEDERAL POWER COMMISSION notify the Clerk of this Court on or before May 22nd, 1948, if the petition for certiorari is filed, otherwise the Clerk of this Court is authorized to distribute the funds as provided by the order of this Court.

156

In the

United States Circuit Court of Appeals

*Application of Respondent Federal Power Commission for a  
Further Stay of Order, Filed May 21, 1948.*

To THE HONORABLE THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The Federal Power Commission, a Respondent, by its counsel, hereby respectfully presents its application for an order further staying the order of this Honorable Court in the above-entitled cause, under and pursuant to the provisions of Section 8(d) of the Act of February 4<sup>th</sup> 1925, 43 Stat. 940, 28 U. S. C. A. Section 350, and in support of its application shows the following:

1. On May 12, 1948, this Honorable Court issued its order directing the distribution of funds impounded during the pendency of a petition for review in this Honorable Court of an order of the Federal Power Commission reducing the rates and charges of Petitioner and, on that same date, pursuant to the application of Respondent Federal Power Commission, filed April 1, 1948, stayed the order until May 22, 1948, and in the event a petition for a writ of certiorari is docketed in the Clerk's Office of the Supreme Court of the United States on or before that date, then until after the Supreme Court passes upon the petition.

2. After careful consideration of the question, the Federal Power Commission requested the Solicitor General of the United States, who represents the Commission before the Supreme Court of the United States, to file a petition for a writ of certiorari to review the order of this Honorable Court relating to the impounded funds.

3. The Solicitor General has had no previous familiarity with the proceeding and presently has the Commission's request under study. Additional time is required by the Solicitor General for consideration of the Commission's request.

4. In view of the foregoing it is unlikely that a petition for a writ of certiorari, if authorized, can be prepared and filed by May 22, 1948, and a further stay of the order is necessary to prevent and avoid the complications that would result if distribution of the funds takes place and there is a necessity for following the funds into the hands of the recipients.

5. This application is filed in good faith and not interposed for the purpose of delay. If a petition for writ of certiorari is authorized, it will be filed at the earliest possible time.

WHEREFORE, Respondent Federal Power Commission requests that this Honorable Court enter its order further staying its order of May 12, 1948, in the above-entitled cause to and including

June 22, 1948; and in the event a petition for a writ of certiorari is docketed in the Clerk's Office of the Supreme Court of the United States on or before June 22, 1948, then until after the Supreme Court passes upon the petition.

Respectfully submitted,

BRADFORD ROSS,  
*General Counsel,*  
*Federal Power Commission.*

Dated at Washington, D. C., May 17, 1948.

178

*Affidavit of Service*

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

Before me, a notary public in and for the District of Columbia, personally appeared Bradford Ross, General Counsel for the Federal Power Commission, who upon being first duly sworn, on oath did depose and say that he duly served copies of the foregoing motion upon each of the persons whose name appears below, by depositing the same in the United States Post Office at Washington, D. C., in sealed envelopes properly addressed thereto with postage prepaid, on the 17th day of May, 1948. Service has so been made upon:

William A. Dougherty, Esq.  
Counsel for Interstate Natural Gas Company, Incorporated  
and Mississippi River Fuel Corporation  
30 Rockefeller Plaza  
New York 20, New York

United Gas Pipe Line Company  
Shreveport 92, Louisiana  
Southern Natural Gas Company  
Watts Building  
Birmingham, Alabama

Mississippi River Fuel Corporation  
407 North Eighth Street  
St. Louis 1, Missouri

Edward Rightor, Esq.  
Counsel for the City of New Orleans, Respondent  
Canal Building  
New Orleans 12, Louisiana

Warren O. Coleman, Esq.  
 Attorney for the City of New Orleans, Respondent  
 Whitney Building  
 New Orleans 12, Louisiana

Francis P. Burns, Esq.  
 Attorney for the City of New Orleans, Respondent  
 American Bank Building  
 New Orleans 12, Louisiana

W. C. Perrault, Esq.  
 Attorney for Louisiana Public Service Commission  
 Box 4005  
 State Capitol  
 Baton Rouge, Louisiana

179 Roland Kizer, Esq.  
 Attorney for the City of Baton Rouge, Louisiana  
 709 Louisiana National Bank Building  
 Baton Rouge, Louisiana

Warren Henry, Esq.  
 Illinois Commerce Commission  
 230 Centennial Building  
 Springfield, Illinois

Forney Johnston, Esq.  
 Attorney for Southern Natural Gas Company  
 First National Building  
 Birmingham 3, Alabama

Russell Rice, Esq.  
 Attorney for the City of Jackson  
 201 Bond Building  
 Jackson, Tennessee

Alden T. Shotwell, Esq.  
 Attorney for Memphis Natural Gas Company  
 Ouachita National Bank  
 Monroe, Louisiana

Edw. P. Russell, Esq.  
 Attorney for Memphis Natural Gas Company  
 29th Floor, Sterick Building  
 Memphis, Tennessee

Gordon Persons, Esq.  
 President, Alabama Public Service Commission  
 Montgomery 1, Alabama

John P. Randolph, Esq.  
General Counsel, Missouri Public Service Commission  
Jefferson City, Missouri

Chas. C. Crabtree, Esq.  
Attorney for Memphis Light, Gas and Water Division  
507 Union Planters Bank Building  
Memphis, Tennessee

Walter R. McDonald, Esq.  
Chairman, Georgia Public Service Commission  
Atlanta, Georgia

Henry P. Dart, Jr., Esq.  
Attorney for Interstate Natural Gas Company, Incorporated  
1008 Canal Building  
New Orleans, Louisiana

180 C. Huffman Lewis, Esq.  
Attorney for the United Gas Pipe Line Company  
1525 Slattery Building  
Shreveport, Louisiana

BRADFORD ROSS.

Subscribed and sworn to before me this 17th day of May, 1948.

BERNICE P. STONE,  
*Notary Public in and for the  
District of Columbia, Washington.*

My commission expires June 14, 1949.

181 In United States Circuit Court of Appeals

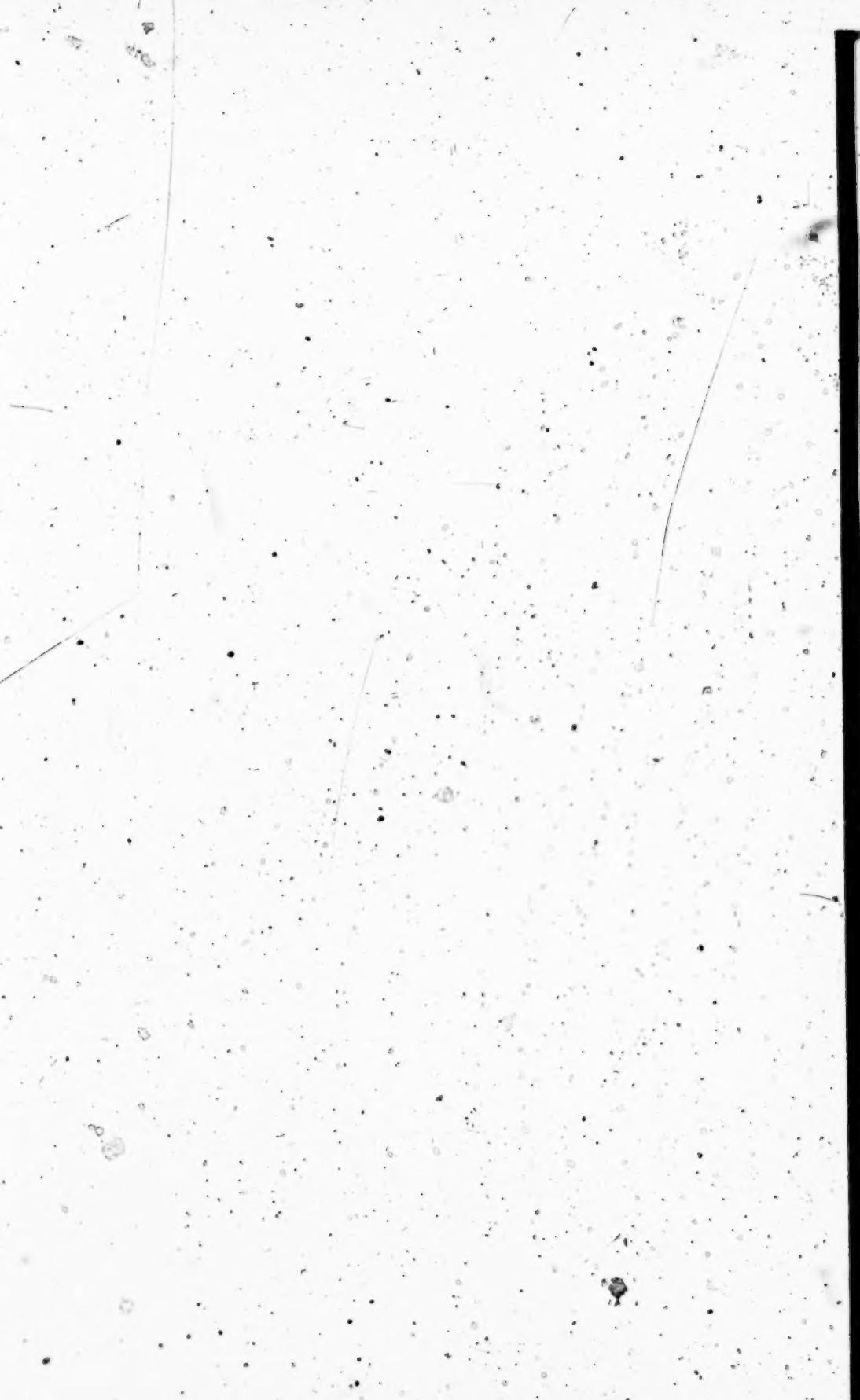
*Order Further Staying Execution of Order to Distribute Funds—  
May 21st, 1948.*

Pursuant to the motion of the FEDERAL POWER COMMISSION IT IS ORDERED that the order of this Court to distribute the funds entered on May 12th, 1948, be further stayed until June 22nd, 1948, pending the filing of a petition in the Supreme Court of the United States for a writ of certiorari, and in the event that said petition for certiorari is filed in the Supreme Court on or before June 22nd, 1948, then until the Supreme Court passes upon said petition.

It is FURTHER ORDERED that counsel for the FEDERAL POWER COMMISSION notify the Clerk of this Court on or before June

22nd, 1948, if the petition for certiorari is filed, otherwise the Clerk of this Court is authorized to distribute the funds as provided by the order of this Court.

182 Clerk's Certificate to foregoing transcript omitted in printing.



## Supreme Court of the United States

No. 109, October Term, 1948.

*Order allowing certiorari*

Filed October 11, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 188, October Term, 1948

*Order allowing certiorari*

Filed October 11, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.





## Supreme Court of the United States

No. 209, October Term, 1948

*Order allowing certiorari*

Filed October 11, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 212, October Term, 1948

*\* Order allowing certiorari*

Filed October 11, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

